

1	UNITED STATES DISTRICT COURT		
2	DISTRICT OF PUERTO RICO		
3	In Re:	)	Docket No. 3:17-BK-3283 (LTS)
4		)	
5	The Financial Oversight and	)	PROMESA Title III
6	Management Board for	)	
7	Puerto Rico,	)	(Jointly Administered)
8	<i>as representative of</i>	)	
9	The Commonwealth of	)	
10	Puerto Rico, <i>et al.</i>	)	August 4, 2021
11	Debtors,	)	
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12	In Re:	)	Docket No. 3:17-BK-4780 (LTS)
13		)	
14	The Financial Oversight and	)	PROMESA Title III
15	Management Board for	)	
16	Puerto Rico,	)	(Jointly Administered)
17	<i>as representative of</i>	)	
18	Puerto Rico Power	)	
19	Authority,	)	
20	Debtor,	)	
21	<hr/>		
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2 In Re: ) Docket No. 3:17-BK-3567 (LTS)  
3 )  
4 ) PROMESA Title III  
5 The Financial Oversight and )  
6 Management Board for )  
7 Puerto Rico, ) (Jointly Administered)  
8 )  
9 as representative of )  
10 )  
11 Puerto Rico Highways and )  
12 Transportation Authority, )  
13 )  
14 Debtor, )  
15 )  
16 )

17  
18 OMNIBUS HEARING  
19  
20 BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN  
21  
22 UNITED STATES DISTRICT COURT JUDGE  
23  
24 AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN  
25  
26 UNITED STATES DISTRICT COURT JUDGE

27 APPEARANCES:

28 ALL PARTIES APPEARING TELEPHONICALLY

29 For The Commonwealth  
30 of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV  
31 Mr. Brian S. Rosen, PHV  
32 Ms. Laura Stafford, PHV  
33 Mr. Joshua A. Esses, PHV  
34 Mr. Scott P. Cooper, PHV

35 For Puerto Rico Fiscal  
36 Agency and Financial  
37 Advisory Authority: Mr. Matthew P. Kremer, PHV  
38 Mr. Luis C. Marini Biaggi, Esq.

1 APPEARANCES, Continued:  
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3 For The Official  
4 Committee of Unsecured  
5 Creditors of all  
6 Title III Debtors: Mr. Luc A. Despins, PHV  
7  
8 For Peter Hein: Mr. Peter Hein, Pro Se  
9  
10 For AmeriNational  
11 Community Services: Mr. Arturo J. Garcia Sola, Esq.  
12  
13 For Cantor-Katz  
14 Collateral Monitor: Mr. Douglas Mintz, PHV  
15  
16 For Financial Guaranty  
17 Insurance Company: Mr. Martin A. Sosland, PHV  
18  
19 For Puerto Rico Land  
20 Administration: Mr. Carlos E. Cardona Fernandez, Esq.  
21  
22 For Sky High Elevators  
23 Corporation: Mr. David W. Roman, Esq.  
24  
25 For Group Wage  
Claimants: Ms. Ivonne Gonzalez Morales, Esq.

24 Proceedings recorded by stenography. Transcript produced by  
25 CAT.

1	I N D E X	
2	WITNESSES:	PAGE
3	None.	
4		
5	EXHIBITS:	
6	None.	
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1 San Juan, Puerto Rico

2 August 4, 2021

3 At or about 9:36 AM

4 \* \* \*

5 THE COURT: Good morning. This is Judge Swain  
6 speaking.

7 MS. NG: Good morning, Judge. This is Lisa, your  
8 courtroom deputy. Everyone's here and ready.

9 THE COURT: Thank you.

10 Would the deputy in San Juan please call the case?

11 COURTROOM DEPUTY: Good morning. The United States  
12 District Court for the District of Puerto Rico is now in  
13 session. The Honorable Laura Taylor Swain presiding. Also  
14 present is Magistrate Judge Judith Gail Dein. God save the  
15 United States of America and this Honorable Court.

16 *In re: The Financial Oversight and Management Board*  
17 *for Puerto Rico, as representative of the Commonwealth of*  
18 *Puerto Rico, et al.,* in case no. 2017-BK-3283, for Omnibus  
19 Hearing.

20 THE COURT: Thank you, Ms. Tacoronte.

21 Buenos dias, good morning, and welcome to counsel,  
22 parties in interest, and members of the public and press.  
23 Despite the great difficulties of this past year, and with a  
24 cautious eye on the coming months, the Court is encouraged by  
25 the recovery efforts, the continued attention to public health

1 measures, both in Puerto Rico and on the mainland, and our  
2 movement toward another confirmation hearing in these Title  
3 III proceedings.

4 To ensure the orderly operation of today's telephonic  
5 hearing, all parties on the line must mute their phones when  
6 they are not speaking. If you are accessing these proceedings  
7 on a computer, please be sure to select "mute" on both the  
8 Court Solutions dashboard and your phone. When you need to  
9 speak, you must unmute on both the dashboard and the phone.

10 I remind everyone that consistent with court and  
11 judicial conference policies, and the orders that have been  
12 issued, no recording or retransmission of the hearing is  
13 permitted by anyone, including but not limited to the parties,  
14 members of the public, or the press. Violations of this rule  
15 may be punished with sanctions.

16 I will be calling on each speaker during these  
17 proceedings. When I do, please identify yourself by name for  
18 clarity of the record. After the speakers listed on the  
19 Agenda for each of today's matters have spoken, I may permit  
20 other parties in interest to address briefly any issues raised  
21 during the course of the presentations that require further  
22 remarks. If you wish to be heard under these circumstances,  
23 please state your name clearly at the appropriate time. Don't  
24 just use the "wave" on the Court Solutions dashboard. I will  
25 call on the speakers if more than one person wishes to be

1 heard.

2 Please don't interrupt each other or me during the  
3 hearing. If we interrupt each other, it is difficult to  
4 create an accurate transcript of the proceedings, but having  
5 said that, I apologize in advance for breaking this rule, as I  
6 may interrupt if I have questions or if you go beyond your  
7 allotted time. If anyone has difficulty hearing me or another  
8 participant, please say something right away.

9 The Agenda, which was filed at docket entry no. 17676  
10 in case no. 17-3283, is available to the public at no cost on  
11 Prime Clerk for those interested. I encourage each speaker to  
12 keep track of his or her own time. The Court will also be  
13 keeping track of the time, and will alert each speaker when  
14 there are two minutes remaining with one buzz and, when time  
15 is up, with two buzzes. Here is an example of the buzz sound.

16 (Sound played.)

17 THE COURT: If your allocation is two minutes or  
18 less, you will just hear the final two buzzes.

19 If we need to take a break, I will direct everyone to  
20 disconnect and to dial back in at a specified time. This  
21 morning we will run from now until 11:50 AM, that is, ten  
22 minutes before 12:00, and then we will resume as necessary  
23 from 10 past 1:00 to 5:00.

24 The first Agenda item is, as usual, status reports  
25 from the Oversight Board and AAFAF. As I requested in the

1 Procedures Order, these reports have been made in writing in  
2 advance of this telephonic hearing, and are available on the  
3 public docket at docket entry nos. 17657 and 17658 in case no.  
4 17-3283, respectively.

5 I thank the Oversight Board and AAFAF for the care  
6 and detail reflected in their reports, which, as always, are  
7 comprehensive and cover important matters. I do not have  
8 further questions for the parties in connection with these  
9 reports.

10 Do counsel for the Oversight Board wish to make any  
11 remarks further to their report?

12 MR. BIENENSTOCK: Good morning, Your Honor. This is  
13 Martin Bienenstock of Proskauer Rose, LLP, for the Oversight  
14 Board. We do not have additional comments this morning, Your  
15 Honor.

16 THE COURT: Thank you. Good morning,  
17 Mr. Bienenstock.

18 Do counsel for AAFAF have any further comments?

19 MR. MARINI BIAGGI: Good morning, Your Honor. This  
20 is Luis Marini, counsel for AAFAF. I do not have any further  
21 comments to make today.

22 THE COURT: Thank you. Good morning, Mr. Marini.

23 MR. MARINI BIAGGI: Good morning.

24 THE COURT: I will wait 30 seconds in case anyone  
25 else is on the line who has a question or comment that they



1 wish to make in connection with the status report. If you do,  
2 state your name clearly now, and then wait for me to call on  
3 you to speak.

4 (No response.)

5 THE COURT: All right. Thank you. Since no one has  
6 indicated that they wish to speak, we will move to the next  
7 section of the Agenda, which is II, the contested matters.  
8 The first contested matter is the DRA Parties' Stay Relief  
9 Motion, and, in particular, the contention of the Oversight  
10 Board that the DRA parties do not have standing to pursue  
11 their motion to lift the stay and for adequate protection.

12 I have as speaking first for 17 minutes on behalf of  
13 the DRA parties Mr. Mintz and/or Mr. Garcia Sola.

14 MR. MINTZ: Good morning, Your Honor. It is Doug  
15 Mintz of Schulte Roth. Can you hear me?

16 THE COURT: Yes, I can. Good morning, Mr. Mintz.

17 MR. MINTZ: Good morning. Doug Mintz of Schulte Roth  
18 for Cantor-Katz Collateral Monitor, LLC, along with Mr. Garcia  
19 from McConnell Valdes for AmeriNational Community Services, as  
20 the DRA parties. I'll speak for a few minutes, and then  
21 Mr. Garcia will continue the discussion, if that's okay with  
22 Your Honor.

23 THE COURT: Yes. Thank you.

24 MR. MINTZ: Okay. Thank you, Your Honor.

25 The DRA parties have standing to file this Adequate

1 Protection and Lift Stay Motion. The standard to proceed on  
2 an adequate protection and lift stay motion is simple: The  
3 movant must have a colorable claim to the property with  
4 respect to which it is seeking relief. And that's from this  
5 Court at 618 B.R. 619, quoting and citing *Grella* from the  
6 First Circuit at 42 F.3d 26.

7 In *Grella*, the First Circuit expounds on this at some  
8 length, citing to about a dozen cases that focus in on the  
9 colorable claims standard. The standard is pretty straight  
10 forward. A party has a colorable claim to the assets when  
11 there is a reasonable likelihood a movant has a, quote,  
12 legitimate claim or lien as to a debtor's property. And  
13 that's from *Grella*, at 33.

14 It's also not hard to satisfy. This Court has  
15 previously held that the colorable claims standard is a,  
16 quote, low threshold. Here, the DRA parties easily satisfy  
17 the colorable claims standards. As set forth in the  
18 substantive motion, starting on page 22, the security  
19 agreement grants the DRA a lien in the incremental Acts 30 and  
20 31 HTA revenues, quote, wherever located.

21 We note for the Court that the government parties do  
22 not dispute the DRA parties' colorable claim here. They  
23 devote every page in both briefs to the asset restrictions,  
24 which Mr. Garcia will discuss at length shortly. So they seem  
25 to have waived their argument regarding that colorable claim.

1 And in the Monolines' Lift Stay litigation, the Oversight  
2 Board conceded that standing and any substantive argument  
3 regarding the liens are coextensive.

4 That should end the discussion. It's a simple  
5 standard. It's easy to meet, no dispute, but, of course, it  
6 doesn't, or we wouldn't be here.

7 Now, before we --

8 THE COURT: I'm sorry, Mr. Mintz.

9 MR. MINTZ: Go ahead.

10 THE COURT: Just to be clear, in the Monolines'  
11 litigation, there was not a contention that there was any sort  
12 of contractual provision or other restriction that disabled  
13 those movants from actually seeking relief on the substantive  
14 claim of a security interest; is that correct?

15 MR. MINTZ: I believe that's correct. There was no  
16 contractual dispute like this one, yes.

17 THE COURT: Thank you.

18 MR. MINTZ: So before proceeding, we want to note,  
19 while the parties have briefed the asset restrictions  
20 extensively, the DRA parties argue that the asset restrictions  
21 question is actually not suitable to hear today. That's  
22 because there's an important distinction between standing in  
23 the Lift Stay and standing to proceed on the underlying case.  
24 The Court need not determine if the DRA Parties would have  
25 standing to proceed on the ultimate merits case here, probably

1 a Commonwealth law foreclosure action, if Your Honor chooses  
2 to lift the stay.

3           The Bankruptcy Court for the District of Maine in *In*  
4 *re Farr*, 2015, Westlaw 658743, explicitly distinguished  
5 between the two standards. The Court held that a creditor  
6 holding a valid security interest sufficed to prevail on the  
7 colorable claims standard, and reserved the debtor's arguments  
8 about the creditors' standing to foreclose for the merits.  
9 Similarly, the asset restrictions may limit, although they  
10 don't, the DRA's ability to foreclose, but do not impact the  
11 colorable claims standard and should be considered only later.

12           Now, with no other argument at this stage, the  
13 government parties are left to try and conjure a standing  
14 argument from the asset restrictions. In their reply brief,  
15 the government parties take a tact we haven't seen before,  
16 arguing the asset restrictions are akin to a no-action clause  
17 and somehow impact standing, but there's no connection in  
18 their argument. They cite the three cases of no held. Two of  
19 them don't even refer to a lift stay or adequate protection  
20 motion. The fact that parties were denied standing in other  
21 matters, this is no relevance given the unique colorable  
22 claims standard.

23           As for the PREPA case they cite, the Court did hold  
24 that the no-action clause left the movant with no standing to  
25 lift the stay, but that case doesn't help much. We weren't

1 | there, of course, but the transcript doesn't yield any  
2 | discussion of the colorable claims standard.

3 |           And when we dug a bit deeper, we saw the bond trustee  
4 | raised a no-action clause argument, not the government. So  
5 | this was a debate among the creditors, rather than with the  
6 | government, which was focused on setoff rights. The colorable  
7 | claim standard wasn't before the Court.

8 |           In any event, even if the Court found the asset  
9 | restrictions do relate to standing here, the plain language,  
10 | as Mr. Garcia will now show, does not prohibit the proposed  
11 | action. So, with that, I'll turn it over to Mr. Garcia.

12 |           THE COURT: Thank you, Mr. Mintz.

13 |           Mr. Garcia, you need to unmute on both your phone and  
14 | the Court Solutions dashboard, please.

15 |           MR. GARCIA SOLA: Okay. Sorry about that. Sorry  
16 | about that, Your Honor.

17 |           THE COURT: That's fine. Good morning, Mr. Garcia.

18 |           MR. GARCIA SOLA: Good morning. Arturo Garcia-Sola  
19 | on behalf of AmeriNational Community Services, LLC.

20 |           I first ask the Court to accept into evidence the  
21 | demonstrative chart that we submitted with our informative  
22 | motion at docket no. 17647.

23 |           THE COURT: No objection was filed to that  
24 | demonstrative, and so it is accepted as part of the record of  
25 | this contested matter.

1 MR. GARCIA SOLA: Thank you, Your Honor.

2 I now then turn to the asset restrictions, by stating  
3 first that they are statutory in nature and do not prohibit  
4 the filing of the DRA's Lift Stay Motion. Contrary to the  
5 government parties' position, the asset restrictions language  
6 in the Transfer Agreement is framed within and consonant with  
7 the GDB Restructuring Act, as amended.

8 Under either the GDB Restructuring Act or the  
9 Transfer Agreement, and pursuant to Puerto Rico's statutory  
10 and construct construction principles, the result is the same.  
11 The DRA is not precluded by the asset restrictions to file the  
12 request to lift the stay.

13 With respect to the GDB Restructuring Act, it sets  
14 forth the obligations of the delivery to, and I quote,  
15 "maximize the value of the assets for the bank to mitigate the  
16 impact that its restructuring may have." And -- and I  
17 underscored the "and" -- the recovery value for distribution  
18 to the corresponding stakeholders. That appears in the  
19 statement of a piece of the law.

20 In furtherance thereof, the restructuring statute  
21 sets forth the obligations of the DRA, which include the  
22 protection of the restructuring property for purpose of  
23 realizing on or preserving the value of the restructuring  
24 property or the process therefrom, including, without  
25 limitation, by initiating necessary legal action and/or any

1 other necessary or convenient actions with respect to  
2 realizing the maximum value of the restructuring property.

3           You can find that in Articles 204 and 205 of the  
4 statute. A strict, literal reading of the Restructuring  
5 Statute leads to the conclusion that the DRA has the power and  
6 right to enforce and protect the restructuring property, in  
7 accordance with the ancillary agreement, and for the sole  
8 purpose of realizing on or preserving or maximizing the value  
9 of the restructuring property, subject only to the asset  
10 restrictions.

11           I now turn to the asset restrictions contained in  
12 Article 207(b) of the GDB Restructuring Act, which are framed  
13 within those general obligations, the language of which is  
14 clear and unambiguous, and allows the DRA to file the Lift  
15 Stay Motion.

16           Statutory construction, pursuant to Puerto Rico Law  
17 and jurisprudence, quote, begins with the text of the  
18 underlying statute, and ends there as well, if the text is  
19 unambiguous. *In re Plaza Resort*, 741 F.3d 269, 2014.

20           Article 14 of the Puerto Rico Civil Code provides  
21 that, "when a law is clear and free from all ambiguity, the  
22 letter of the same shall not be disregarded in a pretext of  
23 fulfilling the spirit thereof."

24           A Court's interpretive function's limited to the  
25 law's clear text and should not rely on the intrinsic reasons

1 that modulated the legislatures to draft or write the law in  
2 the way they did. Courts should abstain from substituting the  
3 legislature's criteria with their own. Preconceptions of what  
4 is just, reasonable, or even desirable, or include scenarios  
5 in the statute which do not fall within the reasons underlying  
6 or motivating the same, *Comite Sante v. CEE*, 197 D.P.R. 914,  
7 2017.

8           Regarding the two asset restriction clauses in the  
9 GDB Restructuring Act, the plain language of Article 207  
10 clearly and unequivocally provides, and the Court can follow  
11 this with the demonstrative evidence, it clearly and  
12 unequivocally provides, first, that the DRA and servicer have,  
13 quote, all rights and powers to do what is necessary to  
14 preserve, protect, or defend any security, or pledge rights  
15 benefiting, end quote, the DRA's non-municipal portfolio.  
16 That's called the preserve and protect powers. You can see it  
17 in the demonstrative chart in the language that's highlighted  
18 in yellow.

19           There are no limitations --

20           THE COURT: Thank you.

21           MR. GARCIA SOLA: Yes. You're welcome, Your Honor.

22           There are no limitations on what -- these preserve  
23 and protect powers, nor do they confine the DRA and servicer  
24 to a particular set of remedies to perform under them. The  
25 DRA's amended motion literally seeks to protect the DRA's



1 interest in its collateral, which is clearly permitted under  
2 the preserve and protect powers of Article 207 of the  
3 Restructuring Act.

4 Article 207 further provides that the third clause,  
5 the so-called Title III treatment powers, is "in furtherance  
6 of the foregoing," that is, of the DRA's preserve and protect  
7 powers under the second clause of the asset restrictions,  
8 which are triggered in very specific circumstances, where,  
9 one, the obligor is in a Title III or Title VI proceeding,  
10 which is met here; and -- and I underscore again "and" -- two,  
11 there are no -- there are other creditors with the same legal  
12 priority and security rights as the DRA. This language is  
13 highlighted in blue in the demonstrative chart. Unless these  
14 two conditions are met, the third clause does not come into  
15 effect.

16 Rather than having said "notwithstanding the  
17 foregoing", the framers of the statute chose to go with "in  
18 furtherance of the foregoing." So the use of "in furtherance  
19 of the foregoing," as a means of relating the Title III  
20 treatment powers to the general preserve, protect, or defend  
21 powers of the second clause showcases that these two  
22 provisions are not mutually exclusive.

23 "Furtherance" is defined as, "the process of helping  
24 something to develop or make progress." Whereas "foregoing"  
25 is defined as "involving what has just been mentioned or

1 described." The quotes come from the Cambridge English  
2 Dictionary.

3 Therefore, "in furtherance of the foregoing" means  
4 that the third clause's language constitutes a means to  
5 fulfill the end that was described in the sentence immediately  
6 preceding it. That is, quote, to preserve --

7 THE COURT: If --

8 MR. GARCIA SOLA: Yes, Your Honor.

9 THE COURT: So you're --

10 MR. GARCIA SOLA: That is --

11 THE COURT: Yes. You can finish your sentence,  
12 please.

13 MR. GARCIA SOLA: That is to preserve, protect, or  
14 defend any security or other pledge rights benefiting the  
15 non-municipal loans.

16 Yes, Your Honor.

17 THE COURT: So is it your position that the second  
18 sentence, the sentence that's highlighted in yellow and that  
19 refers to powers to preserve, protect, or defend any security  
20 or other pledge rights, is broad enough that even without the  
21 third clause, the DRA and the servicer would have been able to  
22 challenge disparate treatment in a Title III plan of the  
23 obligor?

24 MR. GARCIA SOLA: In the context of --

25 THE COURT: In other words, what does three add in

1 terms of powers, if the second clause, the yellow clause, is  
2 as broad as you say it is?

3 MR. GARCIA SOLA: Well, first of all, yes, Your  
4 Honor, we interpret number three as very broad -- I'm sorry,  
5 number two as very broad. Number three is for the very  
6 specific case of a Title III proceeding in which a debtor,  
7 like HTA, has other creditors with the same legal priority and  
8 security rights as DRA. Here in this case, Your Honor, there  
9 are no such creditors.

10 So we are allowed to go under clause 2, because  
11 clause 3 is not triggered, or has not been triggered at the  
12 moment. In fact, as the Court knows, the FOMB is leading the  
13 DRA as subordinated in the Plan, in the Commonwealth Plan.  
14 And while there is no HTA plan at the moment, the Commonwealth  
15 Plan is funded to a large extent with the DRA's assets  
16 constituted by the Act 30 and 31 revenues.

17 So to the extent that even the FOMB understands and  
18 has -- and has alleged that we are subordinated, that the DRA  
19 parties are subordinated, there are no creditors in the view  
20 of the FOMB, which we disagree with, but there are, at the  
21 moment, no creditors that have the same credit or security as  
22 the DRA parties. And, therefore, clause 3 is not implicated,  
23 and we are left with clause 2.

24 And that's what the DRA parties are doing. They're  
25 trying to protect, preserve their collateral from -- from

1 being used, and that's why they're asking for adequate  
2 protection, which is exactly what our Lift Stay Motion is  
3 asking for.

4 I don't know if that answers the question, Your  
5 Honor.

6 THE COURT: Yes. It is an answer to my question. I  
7 have another question for you.

8 Since clause 3 speaks in terms of the Title III  
9 proceeding of the obligor on the instruments, in your view, is  
10 there any scenario in which, with respect to these HTA loans,  
11 clause 3 could be triggered in and applicable in the Title III  
12 case of the Commonwealth?

13 MR. GARCIA SOLA: Yes, Your Honor. There were --  
14 (Sound played.)

15 MR. GARCIA SOLA: -- other creditors -- yes, Your  
16 Honor. There were other creditors that had similar security  
17 or interest in property, specifically the Act 30, 31 revenues,  
18 but that's not the case here.

19 THE COURT: Thank you. You may go on.

20 MR. GARCIA SOLA: Okay. I now turn to the Transfer  
21 Agreement, Your Honor, which the government parties understand  
22 is the relevant and key document for the analysis.

23 The asset restrictions language in the Transfer  
24 Agreement and other ancillary agreements is consistent with  
25 the statutory language, and supports the DRA parties' position

1 in lifting -- in filing the Lift Stay. The government parties  
2 have admitted that the terms of the asset restrictions in the  
3 Transfer Agreement are plain -- are clear, plain and  
4 unambiguous. And I refer the Court to the standing objections  
5 at paragraphs three, four, six and 19.

6 In light of that admission, it is improper for the  
7 government parties to try to move the Court to rely on  
8 anything other than the plain language in the contract to  
9 resolve this dispute. It is fact, or law in Puerto Rico that  
10 when the terms of a contract are unambiguous, courts are duty  
11 bound to interpret them as reflecting the will of the parties  
12 at the time of the agreement, and must refrain from further  
13 speculation as to their alleged contractual intentions.

14 I refer to the case of *In re N-500L Cases*, 517 F.  
15 Supp. at 816, D.P.R. 1981. A literal reading of the asset  
16 restrictions in the Transfer Agreement shows that, as if the  
17 case in the GDB Restructuring Statute, the preserve and  
18 protect powers and the Title III treatment powers are not  
19 mutually exclusive. Due to the joinder of these clauses  
20 through the use of the conjunction, and I refer you to the  
21 demonstrative chart, the language in blue in the second  
22 column --

23 (Sound played.)

24 THE COURT: You may wrap up your point.

25 MR. GARCIA SOLA: Okay. So the contractual

1 interpretation -- I'm sorry. Just as the asset restrictions  
2 in the GDB Restructuring Act, the Transfer Agreement does not  
3 preclude the DRA and/or servicer from being able to preserve,  
4 protect, or defend any security or other pledge rights  
5 benefiting the DRA's HTA obligations in the context of HTA and  
6 CWs. Any other reading, as far as proposed by the government  
7 parties, where an obligor commenced a Title III case such as  
8 HTA, the only action the DRA parties can take is pursuant to  
9 the Title III powers is flawed, because the contractual  
10 provisions and the statutory restrictions are devoid of any  
11 language that can lead to the conclusion that the only action  
12 in the context of an HTA Title III proceeding is under the  
13 third clause.

14 THE COURT: Thank you.

15 MR. GARCIA SOLA: I'm afraid I don't have any more  
16 time, so unless you have any questions --

17 THE COURT: Thank you, Mr. Garcia.

18 MR. GARCIA SOLA: You're welcome.

19 THE COURT: I have no further questions for you at  
20 this time. Thank you very much.

21 MR. GARCIA SOLA: Thank you.

22 THE COURT: And now we will turn to counsel for  
23 AAFAF, who's been allocated 14 minutes.

24 MR. KREMER: Good morning, Your Honor. Matthew  
25 Kremer of O'Melveny & Myers on behalf of AAFAF. Can you hear

1 me?

2 THE COURT: Yes, and good morning, Mr. Kremer. You  
3 may continue.

4 MR KREMER: Good morning. Your Honor, last time I  
5 was before you was in the fall of 2018, where we assembled  
6 actually in person in San Juan to present to you approval of  
7 the GDB Qualifying Modification. As you know, that day marked  
8 a momentous occasion for Puerto Rico. It was the first  
9 successful restructuring in Puerto Rico's decade-long fiscal  
10 crises, resolving 5 billion of Puerto Rico's more than 72  
11 billion in outstanding debt.

12 Now, in entering into that Qualifying Modification,  
13 one of the fundamental aspects was ensuring that the  
14 non-performing intergovernmental bonds transferred to DRA  
15 would be subject to extensive enforcement restrictions as set  
16 forth in the Master Transfer Agreement.

17 The asset restrictions are particularly restrictive  
18 when it comes to an entity in Title III, such as HTA, and this  
19 was to ensure that the DRA would not destruct a pending Title  
20 III case or, alternatively, force an entity into Title III.  
21 The basic idea was we would transfer these loans to DRA, but  
22 they would largely remain a passive actor in Title III.

23 So, Your Honor, you can imagine the Government's  
24 surprise when less than six months, it wasn't six months when  
25 they turned around and moved to lift the stay against HTA in

1 | blatant violation of the asset restrictions.

2 |           And I think it's important at this point, Your Honor,  
3 | to underscore they did that move to lift the stay based on  
4 | some new facts and circumstances that occurred after the  
5 | Qualifying Modification, but they did so based on the historic  
6 | clawback of the Act 30 and 31 revenues, which was occurring  
7 | years before the Qualifying Modification was approved by this  
8 | Court.

9 |           So under the DRA theory, they were authorized  
10 | immediately. Right. Immediately upon you approving the  
11 | Qualified Modification and it being consummated, to turn  
12 | around and lift the stay with respect to billions of dollars  
13 | of non-performing loans, notwithstanding the excessively  
14 | negotiated asset restrictions, this, Your Honor, is of course  
15 | not what the asset restrictions provide, nor was it the  
16 | intention of the parties.

17 |           So before I turn to those asset restrictions, let me  
18 | just take a moment to respond to Mr. Mintz' argument that  
19 | consideration of the asset restrictions is premature. Your  
20 | Honor, this argument highlights the DRA's repeated pattern of  
21 | agreeing to one thing in these cases and then doing another.

22 |           Here, after extensive discussions with the DRA, the  
23 | parties agreed to bifurcate these proceedings to first address  
24 | application of the asset restrictions. Yes, we referred to  
25 | this issue generally in the joint motion as the standing



1 issue, but it was always understood between the parties that  
2 the standing issue was the issue of application of the asset  
3 restrictions.

4 Now, after seeing our briefing on this issue and  
5 understanding the full weight of the asset restriction, the  
6 DRA said, the asset restrictions are irrelevant to standing,  
7 and is premature, and I only need to show a colorable claim.  
8 Your Honor, you should reject this strained attempt upon  
9 consideration of the asset restrictions.

10 As Your Honor knows, in prior lift stay litigation,  
11 this Court bifurcated the issue of standing to first determine  
12 whether certain monolines had a contractual right to proceed  
13 under a bond indentures no-action clause. Here, the asset  
14 restriction functioned in precisely the same manner,  
15 contractually limiting the circumstances in which the DRA can  
16 seek certain types of relief. Thus, there is absolutely no  
17 reason to delay adjudication of this gating issue, and it  
18 would be a tremendous waste of this Court's resources to do  
19 so.

20 Let me just make clear that we will be in a position  
21 to brief the issue of whether or not we have a colorable claim  
22 at the appropriate time, but that is not for today's hearing.

23 Your Honor, next I want to briefly respond to the  
24 argument that the Court should only look to the language in  
25 the GDB Restructuring Act and ignore the asset restrictions

1 | later agreed to by the parties in the Transfer Agreement. I  
2 | want to make clear, the GDB Restructuring Act was an enabling  
3 | statute that provided a broad framework for this  
4 | restructuring, and the act expressly provides, at Article 404,  
5 | that the restructuring property, which includes the  
6 | non-municipal loans in question, shall be transferred in  
7 | accordance with the Transfer Agreement. And the Transfer  
8 | Agreement goes on to confirm this. Right. It speaks that it  
9 | embodies the entire agreement between parties.

10 |         And just to provide a little additional context to  
11 | the Court, the Restructuring Act was enacted by the  
12 | legislative assembly, and then several months elapsed until  
13 | this Court considered the Qualifying Modification, and the  
14 | documents, including the Transfer Agreement, were ultimately  
15 | entered into.

16 |         During these months, the definitive documents were  
17 | extensively negotiated. There were hours and hours and hours  
18 | of phone calls negotiating every provision of these documents,  
19 | and substantially final forms of those documents were filed  
20 | with this Court. And now the DRA says we should just ignore  
21 | all those words.

22 |         There is no legal basis to do so. That is between  
23 | the parties to the contract. There is no legal justification  
24 | or enabling legislation to override the contract that these  
25 | parties freely entered into.

1 THE COURT: Now, there seems to be --

2 MR. KREMER: Your Honor, now --

3 THE COURT: I'm sorry. Conclude your point there.

4 MR. KREMER: No. Please go ahead.

5 THE COURT: Focusing on the provisions of the asset  
6 restrictions in the contract and the statutory language that  
7 the DRA parties claim is parallel, do you see any material  
8 difference in the operation of those specific restrictive  
9 provisions between the statute and the Transfer Agreement?

10 MR. KREMER: Your Honor, I don't. I understand the  
11 distinctions that they highlighted in the demonstrative.  
12 There are certainly differences in the language. Right. The  
13 act was enacted by the legislative assembly, who is not a  
14 party to this agreement, and it's merely familiar with the  
15 terms that were agreed to by the parties and then ultimately  
16 set forth in the Transfer Agreement.

17 And I think that the language that the DRA focuses on  
18 is, you know, in the further support of. And while this  
19 language they say supports them, I think that there can be an  
20 alternative reading of this language as well. Right.

21 You know, first off, I don't think that we need to  
22 focus on any further supportive language whatsoever, because  
23 it sits in the Restructuring Act and not in the Transfer  
24 Agreement. But if we were to look at it, the act acknowledges  
25 that the DRA generally had this right to protect its lien

1 outside of Title III. And then it says, in furtherance of  
2 that right, that in Title III it can exercise that right as  
3 set forth therein.

4 I read this to mean that, yes, outside of Title III,  
5 they have rights to preserve their lien. And that in Title  
6 III, where the automatic stay is in place and where it's  
7 generally understood that the ability for a creditor to  
8 enforce the rights are more limited due to the stay in a court  
9 process, that they can exercise that right in these limited  
10 circumstances as set forth in the final sentence there.

11 So that's how I read both the act and the Transfer  
12 Agreement. I think the Transfer Agreement is more clear on  
13 this point, and I would submit that it's really among one of  
14 the ambiguities that the parties negotiated in entering into a  
15 transfer agreement. And I also think it's important to know  
16 that the case, Your Honor, that they cite for the proposition  
17 that we should look to the Act and not the Transfer Agreement  
18 is *Luis Santiago v. Santiago*, and that is 731 F. Supp. 2d, at  
19 206.

20 So this case they cite for the proposition that under  
21 Puerto Rico law, the Transfer Agreement must be read to be  
22 consistent and not contrary to law, that case actually stands  
23 for the proposition that a contract is valid when it is not  
24 contrary to the law, more or less, or public order. In that  
25 case, the contract was unenforceable, as the subject matter of

1 the contract pertained to illegal activity.

2 Here, the DRA parties are not alleging the contract  
3 is illegal or unenforceable. They argue that a contract  
4 executed under or in line with legislation, must be reduced to  
5 the terms of that legislation. They say no story for that  
6 point, Your Honor, because that is not the law. As is well  
7 established, parties can agree among themselves on terms more  
8 restrictive than legislation.

9 So, Your Honor, hopefully that answers the question  
10 that I think, even if you look to the Act, we still prevail  
11 here, but there is no need to do so. We should be focusing on  
12 the Transfer Agreement.

13 THE COURT: Thank you.

14 MR. KREMER: Now, Your Honor, let me actually turn to  
15 the Transfer Agreement and the Act set forth therein. So the  
16 DRA parties have tried to make a lot of noise here on  
17 complicated matters, but it really is quite straightforward.  
18 Right.

19 In order for the DRA parties to prevail here, they  
20 would have to overcome at least three separate hurdles, each  
21 of which independently lead to the conclusion that the DRA  
22 parties lack standing. So let me just set those out, and then  
23 we can go through them in more detail.

24 First, starting with the plain language, with which  
25 of course this Court must start its analysis. At least three

1 commonly used tools of statutory interpretation lead to the  
2 conclusion that only Clause 3 applies when an obligor such as  
3 HTA is in Title III.

4 Second, they would have to overcome the intention of  
5 the parties. If this Court finds that the asset restrictions  
6 are ambiguous, then we'll move to the intention of the  
7 parties, which undoubtedly support the conclusion that the DRA  
8 parties are not authorized to bring a lift stay motion.

9 And then, finally, Your Honor, if you disagree with  
10 us on both of those points, right, on both the plain language  
11 and the intention of the parties, the Lift Stay Motion is  
12 still not authorized, and this is not an action to preserve,  
13 protect, and defend. This is an action to continue to  
14 affirmatively strike down and invalidate Commonwealth laws,  
15 interfere with certified Commonwealth and HTA fiscal plans,  
16 collect payments, and potentially foreclose on DRA-supported  
17 collateral.

18 So, Your Honor, if you agree with the government  
19 parties on any one of these three points, any one of them, the  
20 Lift Stay Motion should be dismissed for lack of standing.

21 Now, let me turn to the first point, the plain  
22 language. With respect to the plain language, as set forth in  
23 our papers, and I won't belabor it here, there's multiple  
24 tools of statutory interpretation that support the view that  
25 only Clause 3 applies. And the DRA parties, thus, can only

1 exercise rights and remedies to ensure that they are being  
2 treated equally, compared to creditors of equal priority.

3 Your Honor, at this point --

4 THE COURT: Now, let me -- I'm sorry. I want to  
5 raise with you a question I raised with Mr. Garcia as well.  
6 Clause 3 speaks in terms of the Title III proceedings of the  
7 obligor and treatment in such proceedings. Is it your  
8 position that Clause 3 is not only exclusive, but that when an  
9 obligor is in Title III, it precludes any attempt to exercise  
10 or protect the loans from third parties, from actions of other  
11 entities, like the Commonwealth, that may be in Title III  
12 proceedings whatsoever?

13 MR. KREMER: Well, Your Honor, I think that the  
14 automatic stay -- right, so I think it can be read coextensive  
15 with the automatic stay, which should provide that protection  
16 from third-party actions when an obligor is in Title III. So  
17 to the extent we find it -- that Clause 2 should logically  
18 apply to and end up being Clause 3, I think that you can read  
19 that to -- you know, to not need to apply, because the  
20 automatic stay otherwise protects it from those third-party  
21 actions.

22 So, Your Honor, unless I -- if that answers your  
23 question, I can go on to the three statutory tools of  
24 interpretation and how that supports us that the plain  
25 language clearly provides that only the Clause 3 applies in

1 this case.

2 THE COURT: Yes, you may.

3 MR. KREMER: First of all, if we look at the  
4 structure of the asset restrictions paragraph, it precludes  
5 the DRA's interpretation. Right. Clauses 1 and 2 align to  
6 reference to non-municipal loans which precede those clauses.  
7 And, in contrast, Clause 3 repeats that phrase. So if Clauses  
8 1, 2 and 3 were intended to be a conjunctive series, Clause 3  
9 would have a parallel structure and refer back to  
10 non-municipal loans that precede Clause 1.

11 THE COURT: But Clause 3 doesn't --

12 MR. KREMER: Second, Clause 2 --

13 THE COURT: But clause 3 doesn't include the rights,  
14 remedies and powers language.

15 MR. KREMER: That is correct, Your Honor, but there  
16 are different tools that I think support this reading. Right.  
17 And one we pointed out in your previous questioning, that --

18 (Sound played.)

19 MR. KREMER: -- the DRA parties' reading of Clause 2,  
20 Clause 3 is entirely superfluous to Clause 2. Right. In  
21 other words, if in a Title III case the DRA parties have the  
22 unfettered right to preserve, protect, and defend in its  
23 securities or other pledge rights, there is actually no reason  
24 to further specify that the DRA can exercise such rights to  
25 ensure that they receive the same treatment provided to other



1 creditors, the same legal priorities.

2 And the third cannon, Your Honor, is that the  
3 specific treatment over the general -- and this is set forth  
4 in our brief. I want to quickly just get to my next point,  
5 which should be intention of the parties. If this Court finds  
6 that any of this is ambiguous, we look to the intention of the  
7 parties. And I will take -- this point of the intention of  
8 the parties, clearly shows that they intended Clause 3 to only  
9 apply to Title III.

10 Let me lay out some undisputed facts. First, we can  
11 all agree that the asset restrictions were designed to help  
12 protect public entities. We can also agree that among those  
13 public entities, the largest is HTA, or just to give some  
14 context, HTA owed more than 1.7 billion dollars, with the next  
15 largest public entity debtor was the Ports Authority at 270  
16 million. And clause 3 was specifically included for HTA, as  
17 HTA was the only entity that was in Title III, other than the  
18 Commonwealth, at the time the Qualifying Modification was  
19 entered into.

20 So we can all agree that this third clause was put in  
21 place because of HTA. We can also agree that the Qualifying  
22 Modification was consummated at a time when the 30 and 31  
23 revenues were being retained by the Commonwealth.

24 And, finally, we can agree that the Qualified  
25 Modification provided that there was no projected recovery on

1 | these loans.

2 |           So based on these undisputed facts, Your Honor, to  
3 | find that the filing, that the Lift Stay Motion, is consistent  
4 | with the intention of the parties, the Court would have to  
5 | find, first, that the parties intended to allow the DRA to  
6 | immediately enforce the laws based on facts and circumstances  
7 | that predated the transfer of those loans, and to do so  
8 | notwithstanding that each of these loans is classified as  
9 | non-performing and was attributing no recovery value. And  
10 | would --

11 |           (Sound played.)

12 |           MR. KREMER: -- asset restrictions.

13 |           THE COURT: You can wrap up your point, Counsel.

14 |           MR. KREMER: Your Honor, that concludes the first two  
15 | points that --

16 |           COURT REPORTER: Counsel. Counsel.

17 |           THE COURT: Hold on one moment. I think the court  
18 | reporter may have had some difficulties.

19 |           Ms. Walker, were you trying to say something?

20 |           COURT REPORTER: Yes. I'm sorry, Your Honor. If  
21 | counsel could repeat his sentence, or the end of it, when the  
22 | buzzer sounded. It was over the top of his --

23 |           THE COURT: So if you go back to just before the  
24 | buzzer sounded, your sentence --

25 |           MR. KREMER: Sure, Your Honor.

1 THE COURT: Conclude those remarks.

2 MR. KREMER: Yes. I was saying that, so based on all  
3 of these facts, to find that the Lift Stay Motion was  
4 consistent with the parties, this Court would have to find  
5 that the parties -- that the parties intended to allow the DRA  
6 to immediately enforce these loans based on facts and  
7 circumstances that predated the transfer of those loans, and  
8 to do so notwithstanding that each of these loans was  
9 classified in a qualifying modification as non-performing and  
10 attributed no recovery value, and that they could exercise  
11 such remedies notwithstanding the carefully negotiated asset  
12 restrictions.

13 And, Your Honor, I will conclude here that that  
14 addresses both the plain language and the intention of the  
15 parties. And as they implied at the beginning, this Lift Stay  
16 Motion also fails, because it's not an action to preserve and  
17 protect, even if you disagree with us on those first two  
18 points.

19 THE COURT: Thank you, Mr. Kremer. We will now  
20 return to Mr. Mintz or Mr. Garcia.

21 MR. KREMER: And, excuse me, Your Honor, I believe  
22 the Oversight Board now has five minutes.

23 THE COURT: Oh, I'm so sorry. You're absolutely  
24 right. So five minutes for the Oversight Board.

25 MR. ESSES: Thank you, Your Honor. Can you hear me

1 okay?

2 THE COURT: Yes, I can. Is that Mr. Esses?

3 MR. ESSES: It is. Your Honor, Joshua Esses of  
4 Proskauer Rose for the Oversight Board.

5 Your Honor, when the Oversight Board approved the GDB  
6 Title VI restructuring, it was very important to the Board not  
7 only that the restructuring was successful, but also that the  
8 Board was not simply exchanging GDB-related litigation with  
9 litigation in another entity, to then be a disrupting force  
10 across the Commonwealth, as the Oversight Board seeks to  
11 return both the Commonwealth and its instrumentalities to  
12 fiscal responsibility and access to capital markets.

13 This was particularly true with respect to Title III  
14 proceedings, which, as Your Honor knows, are hardly bereft of  
15 litigation. That is why the asset restrictions in the  
16 Transfer Agreement were so important to the Oversight Board.  
17 They were designed to limit the activity the DRA could take in  
18 a Title III case.

19 Accordingly, under (iii) of the asset restrictions in  
20 a Title III case, the DRA is limited to taking actions, "to  
21 ensure that the issuer receives treatment of such proceedings,  
22 but is the same as that provided to other creditors with the  
23 same legal priority, security, or pledge rights."

24 And, here, the DRA will be able to protect the  
25 treatment of its claims. This means treatment under a plan.

1 The bargain struck by --

2 THE COURT: A plan of what entities? A plan of HTA,  
3 so it can't do anything about its claims with respect to  
4 monies being allocated and disposed of under the Commonwealth  
5 Plan?

6 MR. ESSES: A plan of the debtor entity of which it  
7 claims it is a creditor of. And, Your Honor, I think to  
8 address this -- I think the hypothetical that you posed is not  
9 appropriate here, where the Oversight Board, as a matter of  
10 fact, is simply not going to run roughshod over whatever  
11 rights the DRA believes it has on various HTA and  
12 DRA-Commonwealth claims.

13 Rather, the Oversight Board has allowed the DRA to  
14 protect the treatment of their claims in a Title III case, and  
15 we can see this in the Seventh Amended Joint Plan of  
16 Adjustment. Whether or not there are creditors of the  
17 Commonwealth of equal priority to the DRA parties, the Plan  
18 before Your Honor queues up for resolution the DRA-HTA  
19 bondholder, intercreditor issues by defining the GDB loan  
20 priority determination that's a defined term in the Plan at  
21 section 1.258, is a decision with respect to the relevant  
22 rights and interests of the GDB-HTA loans and the HTA bonds.

23 The Plan also holds in reserve, in section 63.2,  
24 consideration available to holders of the GDB-HTA loans and  
25 the HTA --

1 (Sound played.)

2 MR. ESSES: -- bonds, subject to the termination of  
3 these intercreditor issues. It would be wholly incongruous  
4 with the purpose of the GDB Qualifying Modification, as  
5 Mr. Kremer has also observed, for the DRA to be permitted to  
6 commence a barrage of actions against the Oversight Board and  
7 the debtors the day after the GDB Title VI was complete. The  
8 Oversight Board did not agree to give birth to a brand new  
9 litigation partner.

10 Now, as a practical matter, many, if not all of the  
11 issues raised in the Lift Stay Motion are being resolved  
12 elsewhere. So denial of the motion for lack of standing, as a  
13 result of the asset restrictions, in addition to being legally  
14 correct, would also avoid duplication of litigation with  
15 respect to DRA-HTA bondholder intercreditor issues, as well as  
16 the DRA's assertion that they are the only party with a  
17 security interest in the Act 30, 31 revenues.

18 Specifically, in addition to the motion before you,  
19 the DRA has separately commenced an adversary proceeding  
20 against the HTA monolines, asserting an interest in the Acts  
21 30, 31 revenues, and seeking a determination there that their  
22 loan claims are not subordinated to the HTA bonds, among other  
23 things.

24 As set forth in the Joint Status Report, to which the  
25 Oversight Board is a signatory, the Board intends to intervene

1 on the counts there unrelated to intercreditor issues. And  
2 the DRA will be able to fight out subordination with the  
3 monolines in the adversary proceeding. They've also filed an  
4 administrative expense motion, which the status report sets  
5 out a briefing schedule with respect thereto.

6 To conclude, the Oversight Board agrees that the DRA  
7 parties lack standing to bring the motion, because of the  
8 asset restrictions, and respectfully requests the Court deny  
9 the motion. And I'd be happy to address any remaining  
10 questions in the time left, Your Honor.

11 THE COURT: Thank you, Mr. Esses. I have no further  
12 questions for you.

13 So there is one minute allocated for counsel for the  
14 Unsecured Creditors' Committee, Mr. Despins.

15 MR. DESPINS: Good morning, Your Honor. Based on the  
16 remarks today, this morning, we don't have anything to add,  
17 and again yield our time to AAFAF or the Board if they want to  
18 use it.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Did counsel for the Oversight Board or AAFAF want to  
22 say anything for 50 seconds?

23 (No response.)

24 THE COURT: Is that someone trying to speak?

25 MR. KREMER: No, Your Honor, not from AAFAF.

1 THE COURT: Okay. Thank you.

2 So now we will return to the DRA parties for three  
3 minutes.

4 MR. GARCIA SOLA: Yes. Again, Your Honor, for the  
5 record, Arturo Garcia-Sola on behalf of AmeriNational, the  
6 moving party here.

7 So I have very little time, so let me first say that  
8 it is not the DRA's argument that the Court needs to look only  
9 at the statute. Our argument is that the statute and the  
10 Transfer Agreement can co-exist and are -- and they are  
11 actually -- they present the same or very similar language in  
12 answer to the question.

13 Actually, the Transfer Agreement uses the conjunction  
14 "and", which makes it even clearer that the DRA parties can  
15 exercise the preserved and protect powers, as well as the  
16 treatment powers, should this -- the clause 3 be implicated,  
17 which, as I said before, it is not implicated here.

18 The other thing I want to say is that the counsel for  
19 AAFAF alludes to a lot of extrinsic evidence, which is not  
20 before the Court, excepting their, you know, brief. But  
21 they -- if they wanted to make this clearer, as I said before  
22 in my initial remarks, instead of saying in the statute "in  
23 furtherance of the foregoing," they could have said, "not  
24 withstanding the foregoing" --

25 (Sound played.)



1 MR. GARCIA SOLA: -- and then that would have meant  
2 that there was only one way to go, which is as per the  
3 treatment powers.

4 That is not what the statute says. That is not what  
5 the Transfer Agreement says. The Transfer Agreement is  
6 broader in scope. And our position is that the DRA parties  
7 definitely can proceed to protect their collateral, because it  
8 is actually being used to fund the Commonwealth Plan, and  
9 there is actually no HTA plan at the moment.

10 And lastly, Your Honors, the Plan, the seventh  
11 amended Plan, I believe now they're going on an eighth amended  
12 Plan, was prepared without any intervention by the DRA  
13 parties. We tried to get included in the discussions. We  
14 were always left out. The Plan was -- assumed that the DRA  
15 parties are subordinated. Yes -- now, yes, they have the  
16 reserve for the DRA loan priority determination, but the fact  
17 of the matter is that the Act 30, 31 revenues were used to  
18 fund that plan. Absolutely no participation given to the DRA  
19 Parties. And that's where we are today, because we were never  
20 heard.

21 And with that, Your Honor, I'm afraid I'm out of  
22 time. Unless you have any further questions, I rest. Thank  
23 you very much.

24 THE COURT: Thank you.

25 MR. MINTZ: Your Honor.

1 THE COURT: Yes.

2 MR. MINTZ: It's Doug Mintz again.

3 THE COURT: Yes.

4 MR. MINTZ: May I have just 30 seconds to help answer  
5 your prior question to Mr. Garcia about clause 3?

6 THE COURT: Yes.

7 MR. MINTZ: Thank you, Your Honor.

8 So an example where you'd be in a Title III, and the  
9 obligor has creditors with the same legal priority, is, for  
10 example, the DRA owns a number of HTA '98 bonds. If we were  
11 treated differently on those HTA '98 bonds, vis-a-vis other  
12 HTA non-'98 bondholders, then we would have the right to  
13 complain. But assuming we are treated the same, under clause  
14 3, we would be required to stay silent.

15 THE COURT: Yes. I'm not exactly sure which question  
16 you were meaning to respond to with that, because that I get.

17 MR. MINTZ: Okay. I think you had asked --

18 THE COURT: I remember asking a question as to  
19 whether clause 2 would have let you do the same thing, bring  
20 the same challenge in a situation where same bonds were being  
21 treated differently.

22 MR. MINTZ: Yes. So I don't think it -- if we were  
23 being treated the same, I don't think Clause 2 would supersede  
24 Clause 3, because Clause 3 has two limits: One, to Title III,  
25 and a -- alone in Title III, and, two, we have other -- there

1 are other creditors with the same legal priority. So you  
2 would satisfy both of the triggering provisions, and then you  
3 would be only under Clause 3.

4 THE COURT: Yes. That's all that you would need, so  
5 there wouldn't be any question of whether -- you know, unless  
6 there was some other controversy about that, there wouldn't be  
7 any question of whether you would need to resort to clause 2.

8 So that doesn't really present the exclusive remedy  
9 argument or situation that the government parties are trying  
10 to project, if I follow what you're talking about here.

11 MR. MINTZ: Yeah. I think in the plain language,  
12 those -- that's the situation that clause 3 would limit. We  
13 weren't here at the drafting so, you know, aside from the fact  
14 that it's not in evidence, we really don't know what the  
15 various parties intended in the drafting, to be candid. But  
16 it's clear that the plain language of clause 3, that's what  
17 clause 3 would prohibit, it would prohibit us from  
18 complaining, as long as we're being treated the same as other  
19 people of the same priority.

20 THE COURT: Thank you.

21 So I will just ask everyone's indulgence for a couple  
22 of minutes while I gather my thoughts, and then I will make an  
23 oral ruling.

24 Thank you for your patience. I will now make an oral  
25 ruling.

1           Before the Court is *The DRA Parties' Amended Motion*  
2     *and Memorandum of Law in Support of their Request for Adequate*  
3     *Protection or Relief from the Automatic Stay*, (Docket Entry  
4     No. 16276 in Case No. 17-3283, and I'll refer to it as the  
5     "Motion"). Pursuant to the stipulation approved by the Court  
6     at Docket Entry No. 16866, and the Order entered by the Court  
7     at Docket Entry No. 17463, the hearing today concerns only  
8     whether the DRA parties have standing to bring the motion.

9           The Court has carefully reviewed the relevant  
10    pleadings and listened to the arguments today. The Court now  
11    makes its oral ruling as to the Motion, and reserves the right  
12    to make non-substantive corrections in the transcript of the  
13    ruling.

14          As a threshold matter, the Court rejects the DRA  
15    Parties' argument that the Government Parties' objection  
16    should not be considered by the Court because it does not  
17    address issues of standing. The Government Parties' objection  
18    concerns whether the terms of the contract bar the DRA Parties  
19    from seeking relief, which may be construed as a standing  
20    issue. See Black's Law Dictionary (11th ed. 2019) (defining  
21    standing as "A party's right to make a legal claim or seek  
22    judicial enforcement of a duty or right." ).

23          While the question of whether the DRA Parties have a  
24    "colorable claim" could also implicate issues of standing  
25    insofar as it inquires as to the nature and ownership of the

1 | alleged collateral, that standard is applicable to the Court's  
2 | ultimate review of the merits of the Motion and not to the  
3 | threshold issue of standing as framed here, which is whether  
4 | there is a contractual bar to the DRA Parties' pursuit of the  
5 | relief sought here.

6 |           Additionally, it is worth noting that the parties  
7 | have already spent substantial time briefing the Government  
8 | Parties' objections after having continuously pushed out the  
9 | applicable briefing schedule since July of 2019. Moreover,  
10 | the Court has spent time reviewing those submissions in  
11 | preparation for this hearing. There is no benefit to be  
12 | gained from postponing consideration of the arguments raised  
13 | by the Government parties to another day, and no prejudice  
14 | will result if those issues are addressed today.

15 |           Accordingly, the Court will address the Government  
16 | Parties' objections to the Motion that turn on the issue of  
17 | standing to pursue the motion practice. This aspect of the  
18 | parties' dispute principally focuses on section 1(b) of the  
19 | Master Transfer Agreement dated November 29, 2018 (I'll refer  
20 | to that as the "Transfer Agreement") and a related definition  
21 | in that agreement.

22 |           Section 1(b) of the Transfer Agreement provides, in  
23 | relevant part, that "the Issuer shall comply and shall direct  
24 | the servicer to comply with the asset restrictions with  
25 | respect to the transferred property...." Accordingly, the

1 | DRA, as the "Issuer," and AmeriNational as the "Servicer," are  
2 | required to comply with the Asset Restrictions, which are  
3 | defined in Schedule I to the Transfer Agreement.  
4 | Subparagraphs (b)(ii) and (b)(iii) of the "Asset Restriction"  
5 | definition, which applies in pertinent part to the  
6 | non-municipal loans at issue in the instant motion practice,  
7 | will be referred to in this oral decision as the "Transfer  
8 | Agreement Asset Restrictions," and I will refer to those  
9 | specific subparagraphs as "Clause 2" and "Clause 3"  
10 | respectively.

11 |           Combined with its prefatory stem, Clause 2 provides  
12 | that "with respect to any Non-Municipal Loan, rights,  
13 | remedies, and powers in respect of such non-municipal loan may  
14 | be exercised solely to the extent necessary...to preserve,  
15 | protect, or defend any security or other pledge rights  
16 | benefiting such Non-Municipal Loan." Combined with its  
17 | prefatory stem, Clause 3 provides that "with respect to any  
18 | Non-Municipal Loan, rights, remedies, and powers in respect to  
19 | such non-municipal loan may be exercised solely to the extent  
20 | necessary...in the case of a Non-Municipal Loan where the  
21 | applicable Obligor is in a proceeding under Title III or Title  
22 | VI of PROMESA, and such Obligor has other creditors with the  
23 | same legal priority, security or pledge rights as the Issuer,  
24 | to ensure that the Issuer receives treatment in such  
25 | proceedings that is the same as that provided to other

1 creditors with the same legal priority, security, or pledge  
2 rights."

3           The Government Parties' objection first argues that  
4 where an obligor such as HTA has commenced a Title III case,  
5 Clause 3 of the Transfer Agreement Asset Restrictions confines  
6 the DRA Parties' freedom of action such that they may only  
7 ensure that they receive the same treatment as other creditors  
8 within that obligor's Title III case with the same legal  
9 priority, security, or pledge rights. Moreover, the Oversight  
10 Board argues that no such other creditors exist, and that the  
11 DRA Parties are, therefore, barred from taking any action,  
12 even in the Commonwealth separate Title III action, or  
13 elsewhere to preserve any rights that they claim arise out of  
14 the Non-Municipal's Loans.

15           I do note that the Government Parties have pointed  
16 out a provision in the Seventh Amended Plan that would permit  
17 the DRA Parties and other HTA creditors to litigate priority  
18 issues with respect to certain funds that are being dealt with  
19 within that proposed Commonwealth Plan, that there is that  
20 specific provision within that plan, but the Government  
21 Parties do not appear to concede that the DRA Parties would  
22 have an independent right to cue up the sort of litigation  
23 that seems to be contemplated by the instant motion, absent  
24 some specific plan mechanism within the Commonwealth Plan.

25           The DRA Parties contend that similar but different

1 asset restrictions imposed by the GDB Restructuring Act  
2 overcome the Transfer Agreement Asset Restrictions such that  
3 the Court should reject the Government Parties' arguments  
4 entirely. The DRA Parties provide no textual basis for the  
5 argument that the statutory asset restrictions govern,  
6 notwithstanding any constraints imposed by the Transfer  
7 Agreement Asset Restrictions.

8           Furthermore, as noted by the Government Parties,  
9 Section 404 of the GDB Restructuring Act specifically  
10 contemplates that additional terms and conditions may be  
11 imposed by the Transfer Agreement, and, as a practical matter,  
12 today, in oral argument, the representatives of the DRA took  
13 the position that, fundamentally, there is not a material  
14 difference between the effect that they contend the statutory  
15 provision has and the reading that they are proposing of the  
16 Transfer Agreement Asset Restrictions.

17           But the Court will point out that even if the GDB  
18 Restructuring Act permits the DRA to exercise certain rights,  
19 nothing precludes the DRA from agreeing to contractual  
20 limitations on such rights, and as the DRA Parties have noted,  
21 the GDB Restructuring Act specifically permits the DRA to  
22 enter into contracts and to use its property in accordance  
23 with the ancillary agreements, such as the Transfer Agreement.

24           Accordingly, the Court next turns to the proper  
25 interpretation of the Transfer Agreement Asset Restrictions.



1 The parties agree that interpretation of the Transfer  
2 Agreement is governed by Puerto Rico law, and that under  
3 Puerto Rico Law, the plain text of a contract is controlling  
4 "[i]f the terms of a contract are clear and leave no doubt as  
5 to the intention of the contracting parties." 31 L.P.R.A. §  
6 3471.

7           The Government Parties' interpretation of Clause 3 is  
8 not supported by the Transfer Agreement's plain text. The  
9 basic premise of the Government Parties' argument is that when  
10 Clause 3 is triggered, the limited rights contained in Clause  
11 3 are the sole rights that the DRA Parties may exercise. The  
12 Government Parties, however, focus their attention exclusively  
13 on the first condition of Clause 3, even though Clause 3  
14 presents two conditions. Specifically, Clause 3 applies where  
15 the applicable Obligor is in a proceeding under Title III or  
16 Title VI of PROMESA, and such Obligor has other creditors with  
17 the same legal priority. Both the Government Parties and the  
18 DRA Parties appear to be in agreement that there are no other  
19 creditors in the HTA case with the same legal priority as the  
20 DRA, at least with respect to these loans. Accordingly, even  
21 if the Government Parties are correct that Clause 3 provides  
22 the exclusive remedy available to the DRA Parties when it is  
23 triggered, Clause 3 has not been triggered and is, therefore,  
24 inapplicable to the present circumstances. There is no  
25 textual indication that the existence of the HTA Title III

1 case in and of itself limits the DRA Parties' rights.

2 To be clear, the Court is not ruling on the  
3 Government Parties' contention that if Clause 3 conditions are  
4 met, Clause 2 is no longer applicable. Rather, the parties  
5 agree that Clause 3's conditions have not been triggered, and  
6 the Court need not address what would happen if hypothetically  
7 Clause 3's conditions were satisfied.

8 The Government Parties' other arguments concerning  
9 Clause 3 would all have the Court attempt to discern the  
10 parties' intentions based on the circumstances in which the  
11 Transfer Agreement was executed, or with reference to other  
12 extrinsic evidence, none of which is relevant in light of the  
13 Transfer Agreement's facial lack of ambiguity. As such, the  
14 Government Parties' standing objection based on Clause 3 is  
15 overruled.

16 The Government Parties' alternative argument for lack  
17 of standing is that Clause 2 of the Transfer Agreement Asset  
18 Restrictions bars filing the motion, because the motion  
19 ultimately seeks to collect on the proceeds of a security  
20 interest, rather than to preserve, protect, or defend any  
21 security or other pledge rights.

22 The Government Parties' argument concerning Clause 2  
23 ignores the fact that Clause 2 is not a complete sentence.  
24 The DRA Parties are not limited to preserving, protecting, or  
25 defending the DRA's rights. Rather, the stem of the provision

1 makes it clear that they are authorized to exercise rights,  
2 remedies, and powers to preserve, protect, or defend the  
3 security or pledge rights benefiting the non-municipal loans.

4           The Government Parties have shown no textual basis  
5 for their claim that Clause 2 limits the DRA's Parties'  
6 remedies so severely that the DRA Parties may, at most, seek a  
7 determination that they have a property right or pledge. The  
8 determination of the existence of a property right or pledge  
9 is potentially only one aspect of a remedy capable of  
10 preserving, protecting, or defending security or pledge  
11 rights.

12           Section 361 of the Bankruptcy Code provides a method  
13 by which a secured creditor may apply to the Bankruptcy Court  
14 to protect its interest against the diminution in value of its  
15 security during a bankruptcy proceeding. In re WestPoint  
16 Stevens, Inc., 600 F.3d 231, 257 (2nd Cir. 2010).

17           The adequate protection contemplated by section  
18 321 -- I'm sorry, 361, protects a creditor's security interest  
19 so as to maintain the benefit of the bargain that the secured  
20 creditor originally made with the debtors. In re Dynaco  
21 Corp., 162 B.R. 389, 393 (Bankr. D.N.H. 1993).

22           Thus, adequate protection allows a secured creditor  
23 to protect the security or other pledge rights benefiting its  
24 claims against the diminution in value of the creditors'  
25 collateral.

1           The premise of the Motion is that the Commonwealth  
2 "has continuously depleted the value of the DRA's collateral  
3 and has indicated that it will continue to do so for the  
4 duration of the Commonwealth's Title III cases." (I cite the  
5 Motion at 2.) And the Motion is thus framed as one that seeks  
6 to exercise the DRA's rights, remedies, and powers by  
7 requesting adequate protection pursuant to section 361 of the  
8 Bankruptcy Code.

9           The Government Parties disagree with the merits of  
10 the motion, and dispute whether the revenues at issue are the  
11 DRA's collateral. They also contend that the Commonwealth's  
12 retention and use of the disputed revenues is not unlawful,  
13 but those are merits issues and, as presented in the Motion,  
14 the DRA's Parties request for adequate protection seeks a  
15 remedy for the alleged diversion of collateral. As such, the  
16 government parties have failed to demonstrate that the DRA  
17 Parties are prohibited by the asset restrictions from seeking  
18 adequate protection.

19           The DRA parties have also requested relief from the  
20 automatic stay pursuant to sections 362(d)(1) and 362(d)(2) of  
21 the Bankruptcy Code. The motion presents that request as an  
22 alternative to adequate protection, and the pleadings so far  
23 have not described in much detail the claims and remedies that  
24 the DRA parties would pursue if that aspect of the motion were  
25 granted.

1                   Accordingly, there is not a sufficient basis for the  
2 Court to determine whether the relief sought in that aspect of  
3 the motion exceeds the scope of the Transfer Agreement asset  
4 restrictions. Accordingly, the Court overrules the Government  
5 Parties' standing objection insofar as it relates to the  
6 aspect of the motion that seeks adequate protection, and  
7 defers consideration of the standing objection insofar as the  
8 motion requests relief from the automatic stay, pending  
9 further clarification of the nature and scope of the stay  
10 relief that the DRA Parties seek.

11                   The parties are directed to meet and confer  
12 concerning the next steps with respect to litigation of the  
13 Motion, and to submit a joint status report by August 11th,  
14 including, to the extent possible, a stipulation or agreed  
15 proposed order addressing the nature and timing of such  
16 litigation, and the scope of activity for which the DRA  
17 parties seek authorization by way of the request for relief  
18 from the automatic stay.

19                   That concludes the oral ruling with respect to the  
20 standing issue. Thank you all very much.

21                   The next Agenda item is the Cobra Acquisitions  
22 motion --

23                   MR. QURESHI: Thank you, Your Honor.

24                   THE COURT: Thank you.

25                   The Cobra Acquisitions, LLC's, Motion to Lift the

1 Stay Order. I have speaking for Cobra for the first five  
2 minutes Mr. Qureshi or Mr. Heimberg, and/or Mr. Heimberg.

3 MR. QURESHI: Good morning, Your Honor. Abid Qureshi  
4 from Akin Gump Strauss Hauer & Feld on behalf of Cobra, and I  
5 will address the Court initially, Your Honor.

6 THE COURT: Good morning, Mr. Qureshi.

7 MR. QURESHI: Good morning. May I proceed, Your  
8 Honor?

9 THE COURT: Yes, you may.

10 MR. QURESHI: Thank you very much. And let me start,  
11 Your Honor, by noting that we and the government parties did  
12 file a joint status report in response to Your Honor's request  
13 in advance of the last hearing, at which our stay motion had  
14 been scheduled. So I am more than happy to answer any  
15 questions that the Court may have with respect to the  
16 responses that we submitted to the Court's five specific  
17 questions. Otherwise, I will proceed with the argument on our  
18 Motion to Lift the Stay.

19 THE COURT: Thank you.

20 I have reviewed the status report, and I would prefer  
21 that you go into your argument. I may have follow-up  
22 questions then.

23 MR. QURESHI: Oh, okay. Thank you very much, Your  
24 Honor.

25 As Your Honor is aware, the standard to lift the stay

1 is, of course, in the Court's discretion based upon the  
2 existence of any material change in circumstances. As Your  
3 Honor is also aware, we have asked the Court now multiple  
4 times to lift the stay that has been in effect for almost two  
5 years.

6 And this time around, Your Honor, we believe that  
7 there are two material change in circumstances upon which we  
8 rely. First is what appears to be an indefinite adjournment  
9 to the ongoing criminal proceedings. As Your Honor may  
10 recall, when the Stay Order was initially entered back in  
11 October of 2019, at that time the criminal trial was scheduled  
12 to commence in early December of 2019. Since then, there have  
13 been a number of adjournments.

14 And, Your Honor, the latest information that we have,  
15 as reflected in the status report, is that a trial date has  
16 been held in abeyance for reasons that were not identified by  
17 the criminal court. There is no pretrial conference that has  
18 been set. And so from our vantage point, Your Honor, we  
19 simply don't have any information as to when that criminal  
20 proceeding may ultimately go forward.

21 The second reason, Your Honor, for us to move to lift  
22 the stay at this point relates to FEMA's analysis of the cost.  
23 Your Honor, again, at the time that we submitted our initial  
24 motion to lift the stay, Cobra had no information as to when,  
25 in fact, FEMA would complete its analysis.

1           As Your Honor is now aware, on May 26, FEMA issued  
2     its so-called determination memorandum with respect to what we  
3     now know to be only the first contract. Now that FEMA has  
4     completed that portion of its analysis, and Your Honor will  
5     also note from the status report a total of approximately 40  
6     or so million dollars was disallowed in that report out of a  
7     total of 945 million dollars. PREPA has appealed FEMA's  
8     determination of that ruling with, of course, the full support  
9     of Cobra.

10           But, Your Honor, nonetheless, it was our view, it is  
11     our view that the completion of that FEMA cost report is also  
12     a change in circumstances that merits lifting the stay. And,  
13     Your Honor, what I would note in particular in the status  
14     report is the following.

15           PREPA says that FEMA's ongoing analysis -- and now  
16     FEMA, we are told in the status report by the government  
17     parties, is in the course of reviewing the second contract,  
18     which of course it is pursuant to the --

19           (Sound played.)

20           MR. QURESHI: -- second contract that the majority of  
21     amounts remain unpaid. But, Your Honor, with respect to 135  
22     million dollars yet to be validated, PREPA points out that  
23     that is for reasons, including deficient documentation,  
24     duplicative invoices, head count discrepancies and the like.

25           Your Honor, Cobra has literally been begging PREPA



1 for more than two years to engage with us with respect to  
2 those very issues, so we can identify specifically what  
3 records it is that they need and can finally resolve the  
4 issues. PREPA has been using the stay as an excuse to  
5 literally do nothing to try to resolve these open issues while  
6 a never-ending FEMA process unfolds.

7           Respectfully, Your Honor, we think it's enough. The  
8 case law that we've cited stands for the very clear  
9 proposition that indefinite stays are disfavored by courts.  
10 Here the stay has morphed into something that is indefinite.  
11 It is causing great prejudice to Cobra. And we think it is in  
12 the interest not only of Cobra, but of all of the parties to  
13 this proceeding, given the size of the claim and the ongoing  
14 interest accrual, that the parties finally move forward, agree  
15 on a sensible discovery schedule, and start to engage on the  
16 substance, so that we can hopefully resolve most of the  
17 issues, and if not, be prepared to litigate whatever issues  
18 remain.

19           And with that, Your Honor, I'm happy to take any  
20 questions.

21           THE COURT: Only one. Do you agree that a plan of  
22 adjustment can be confirmed without resolution of the  
23 administrative expense motion, as long as a sufficient cash  
24 reserve is set aside --

25           MR. QURESHI: Yes, Your Honor. In theory -- I'm

1 | sorry, Your Honor.

2 | (Sound played.)

3 | MR. QURESHI: Yes, Your Honor. In theory, I  
4 | certainly agree that it is possible to confirm a plan of  
5 | adjustment if there is an adequate disputed claims reserve.  
6 | However, here, the aggregate amount of the Cobra claim,  
7 | inclusive of interest, is approximately 300 million dollars  
8 | and growing. And, therefore, it may raise a question of  
9 | feasibility of the Plan of Adjustment, and whether, in fact,  
10 | it is feasible, if that size of a cash reserve is required.

11 | So from our point, Your Honor, having at the time of  
12 | confirmation a litigation concerning feasibility, as well as a  
13 | litigation concerning the size of the disputed claim reserve  
14 | that ought to be set aside, is judicially inefficient, and not  
15 | in the interest of any of the parties.

16 | Everybody would be served better if there were  
17 | certainty as to what the size of the claim is at the time that  
18 | a plan of adjustment is confirmed.

19 | THE COURT: Thank you.

20 | So next I have, for the Oversight Board, Mr. Cooper  
21 | for seven minutes.

22 | MR. COOPER: Yes, Your Honor. Good morning. Scott  
23 | Cooper of Proskauer Rose, LLP, for the Oversight Board on  
24 | behalf of the government parties.

25 | Your Honor, the stay should remain in place, because

1 the FEMA review process is the best path forward for the  
2 parties to narrow and hopefully resolve their disputes.  
3 Cobra's been paid approximately 1.1 billion of the  
4 approximately 1.3 billion dollars it invoiced to PREPA.

5 It is not a contractor that has generally gone  
6 unpaid. Unlike other PREPA contractors, Cobra's former CEO  
7 and a key FEMA official involved in overseeing Cobra's  
8 contracts with PREPA have been indicted on criminal fraud and  
9 bribery charges related to the same contracts for which Cobra  
10 seeks to obtain the remaining portion of those contracts that  
11 have not yet been paid.

12 The criminal indictments of Cobra's CEO and two FEMA  
13 employees charged with overseeing its work were unprecedented  
14 in seismic developments when they occurred in 2019, and they  
15 naturally caused FEMA to pause its reimbursement and review  
16 process, and, we understand, to instruct COR3 to suspend any  
17 additional payments to Cobra pending FEMA's further review.  
18 Then, starting in March last year, the process was further  
19 slowed by the onset of the worldwide pandemic.

20 Nevertheless, that review process has since moved  
21 forward significantly, and continues to offer by far the best  
22 and most efficient path for resolving the remaining disputes.

23 With respect to Cobra's first contract, PREPA's first  
24 contract with Cobra, FEMA's joint recovery office issued its  
25 eligibility determination memorandum in May, and, again, has

1 approved the large majority of the funds for public assistance  
2 funding, and determined just over 46 and a half million are  
3 not eligible and deobligated that amount. PREPA already has  
4 appealed that disallowance to FEMA's regional office seeking  
5 allowance for the full amount.

6 THE COURT: And so PREPA doesn't --

7 MR. COOPER: FEMA's review process -- go ahead, Your  
8 Honor.

9 THE COURT: PREPA doesn't dispute the 46 million in  
10 costs that were disallowed?

11 MR. COOPER: PREPA has taken the position that the  
12 disallowance of those funds is incorrect, and together with  
13 Cobra, has submitted both arguments with respect to contract  
14 interpretation and additional documentation. PREPA has  
15 reserved the right to contest the amounts that were disallowed  
16 by FEMA in this proceeding in the event that the appeal is  
17 unsuccessful.

18 But, currently, Cobra and PREPA are attempting to  
19 maximize the amount of funds available from FEMA for a payment  
20 of the remainder of the sums claimed by Cobra under the first  
21 contract.

22 THE COURT: Thank you.

23 MR. COOPER: FEMA's review process also is under way  
24 regarding the second Cobra contract. As detailed in our July  
25 20 joint status conference -- or status report, PREPA is

1 | advised that the cost validation review on what FEMA has  
2 | designated project worksheet 466 is currently being performed  
3 | by FEMA.

4 |           We understand PREPA has recently received a request  
5 | for information seeking substantial additional information in  
6 | support of the eligibility of costs under the second contract.  
7 | PREPA also understands FEMA is in the early phases of  
8 | developing its views and understanding of the scope of work  
9 | performed under what it has deemed as project worksheet 49831.  
10 | An additional request for information from the CRC relating to  
11 | those invoices are likely.

12 |           PREPA understands that FEMA's internal target is to  
13 | have work completed on both of those project worksheets  
14 | relating to the second contract by December 31, 2021, so by  
15 | the end of this year. The parties currently are cooperating  
16 | in connection with FEMA's review to maximize the amounts FEMA  
17 | will fund for payment to Cobra, and we think that's the most  
18 | effective way to narrow their disputes, forcing PREPA actively  
19 | to assert its defenses to Cobra's remaining claims in this  
20 | proceeding to work against that collective effort.

21 |           FEMA's determination for the remaining invoice  
22 | amounts also will inform the parties of FEMA's position on the  
23 | validity and reasonableness of Cobra's invoices and the  
24 | availability of federal funds for payment. We expect FEMA's  
25 | determinations will facilitate --

1 (Sound played.)

2 MR. COOPER: -- voluntary resolution of the dispute  
3 by the parties. FEMA's process, therefore, provides the best  
4 path forward for facilitating resolution of the remaining  
5 issues.

6 Requiring the parties to proceed with discovery at  
7 this time seems, thus, likely to be the least efficient way to  
8 proceed. It would impose an unnecessary burden on the Court  
9 and be a waste of limited time, money, and other PREPA  
10 resources to conduct discovery, and probably be productive  
11 with -- counterproductive with respect to its submission of  
12 additional information to FEMA. Continuing to advance the  
13 FEMA review process of the second contract will be the most  
14 productive thing the parties can do.

15 The parties all agree, under the controlling law,  
16 that continuing the stay is well within the discretion of the  
17 Court. We think it's clear that the continuation of the stay  
18 is in the best interest of the Court, all of the parties, and  
19 the orderly adjudication of the issues.

20 We have been making progress, Your Honor --

21 THE COURT: Does that --

22 MR. COOPER: Go ahead.

23 THE COURT: Cobra has referred to the 135 million  
24 dollars as to which PREPA has questioned the sufficiency of  
25 documentation from Cobra, and Cobra's counsel today said

1 they'd like to be engaged on that, they'd like to know what it  
2 is you think you're missing. Wouldn't at least that limited  
3 sort of engagement, whether in connection with a formal  
4 lifting of the stay or more informally assist PREPA in moving  
5 along both with FEMA and in its own internal deliberations as  
6 to whether there really are problems or not?

7 MR. COOPER: Your Honor, I -- PREPA and Cobra have  
8 engaged in -- we understand that PREPA and Cobra have engaged  
9 in substantial back and forth communications with regard to --

10 (Sound played.)

11 MR. COOPER: -- the outstanding invoices. And there  
12 certainly have been disagreements between the two parties with  
13 respect to which costs are payable under those invoices. We  
14 understand that PREPA has been asked again to review those  
15 invoices that involve invalidated costs, to provide more  
16 detailed information on what costs are approved, and what  
17 costs are disapproved. And we understand that PREPA has begun  
18 that process again, and will be moving forward with it.

19 So we don't believe that a lifting of the stay is  
20 necessary for that process to proceed. It's something that is  
21 in the joint interests of PREPA and Cobra in order to maximize  
22 the amount of money that's available from FEMA with respect to  
23 those invoices.

24 THE COURT: Thank you. So your time has run out, and  
25 I will return to Cobra's counsel for two minutes.

1 MR. QURESHI: Thank you, Your Honor. Again, Abid  
2 Qureshi, Akin Gump, on behalf of Cobra.

3 Your Honor, what counsel just said with respect to  
4 the 135 million dollars and PREPA engaging with Cobra, let me  
5 say very categorically and clearly, it is simply not true.  
6 There has been absolutely no substantive engagement by PREPA  
7 with respect to those outstanding invoices.

8 What counsel is saying is that the FEMA review  
9 process should substitute as -- should substitute for the work  
10 that PREPA should be doing. But, Your Honor, our contract,  
11 Cobra's contract is with PREPA, not with FEMA. While Cobra  
12 has been and will continue to be fully supportive of PREPA's  
13 efforts to get as much funding as possible from FEMA, at the  
14 end of the day, the contractual liability is PREPA's and  
15 PREPA's alone.

16 So, Your Honor, we think it is inappropriate for  
17 PREPA to continue to drag its feet under the cover of a stay  
18 that has been indefinite, to let a FEMA process with no end  
19 date in sight preclude Cobra from bringing this matter to  
20 resolution. So, Your Honor, we again respectfully request the  
21 stay be lifted formally, not just informally, so that the  
22 parties can agree upon a schedule to get the open issues,  
23 which we don't believe are that broad, finally resolved.

24 And, lastly, with respect to the criminal  
25 proceedings, PREPA's rights would, of course, be fully



1 reserved to argue whatever they would like to further down the  
2 road when a resolution is reached in that proceeding.

3 Thank you, Your Honor.

4 THE COURT: Thank you. So I will again ask  
5 everybody's indulgence and a couple of minutes to gather my  
6 thoughts.

7 Thank you for your patience. Pending before the  
8 Court is the *Motion to Lift the Stay Order*, which is Docket  
9 Entry No. 16328 in Case No. 17-3283, and Docket Entry No. 2428  
10 in Case No. 17-4780, which I'll refer to as the "Lift Stay  
11 Motion" filed by Cobra Acquisitions, LLC, which I'll refer to  
12 as "Cobra."

13 The Court has reviewed the relevant pleadings  
14 carefully and now makes its oral ruling as to the Lift Stay  
15 Motion, and reserves the right to make non-substantive  
16 corrections in the transcript of this ruling.

17 For the following reasons, the Lift Stay Motion is  
18 denied. Cobra requests termination of the litigation stay  
19 imposed by the Court in October 2019, and continued since that  
20 time, so that the parties may litigate Cobra's Administrative  
21 Expense Motion, which is Docket Entry No. 8789 in Case No.  
22 17-3283.

23 The Court originally imposed the litigation stay,  
24 which was requested by the government parties, based on its  
25 conclusions that factual and legal questions that could affect

1 the outcome of the Administrative Expense Motion would likely  
2 be addressed in connection with the criminal proceedings, and  
3 that the then pending FEMA investigation could also affect the  
4 parties' rights and obligations with respect to the amounts  
5 for which Cobra seeks administrative expense treatment.

6 The power to stay proceedings is incidental to the  
7 power inherent in every Court to control the disposition of  
8 the cases on its docket with economy of time and effort for  
9 itself, for counsel, and for litigants. Landis v. North  
10 American Company, 299 U.S. 248, 254, a 1936 decision.

11 As this Court noted in its Order imposing the Stay,  
12 "Federal Courts possess the inherent power to stay proceedings  
13 for prudential reasons." I'm quoting there the Order Granting  
14 Joint Urgent Motion of the Oversight Board, PREPA, and AAFAF  
15 to extend all applicable deadlines to Cobra Acquisition, LLC's  
16 Motion for Allowance and Payment of Administrative Expense  
17 Claims, which is Docket Entry No. 8886 in Case No. 17-3283,  
18 which I'll refer to as the "First Stay Order". And that was  
19 quoting Microfinancial, Inc., v. Premier Holidays  
20 International, Inc., 385 F.3d 72, 77 (1st Cir. 2004).

21 It follows from these principles that after  
22 imposition of a stay for prudential reasons, the Court retains  
23 the ability to modify or dissolve the stay, Green v. Crosby,  
24 177 F. Supp 3d 673, 681 (D. Mass. 2016).

25 Such circumstances include material changes in the

1 | circumstances that the Court originally determined warranted  
2 | the Stay. Cobra contends that such material changes have  
3 | occurred.

4 |         First, the criminal trial is no longer imminent in  
5 | that no trial date is scheduled. Second, Cobra characterizes  
6 | the expected cost analysis and determination from FEMA is  
7 | incomplete insofar as it only analyzes the first of two  
8 | contracts between Cobra and PREPA, and Cobra asserts that  
9 | further delay pending an examination of the second of its two  
10 | contracts with PREPA is unwarranted.

11 |         Cobra argues that it will be unduly prejudiced by  
12 | continuation of the Stay pending FEMA review of the second  
13 | contract and any administrative appeals that PREPA pursues,  
14 | because the ultimate resolution of the claim will require  
15 | further litigation, and the continuing financial uncertainty  
16 | is harmful to Cobra's business interests.

17 |         Separately, Cobra argues that PREPA effectively is  
18 | limited to two options to satisfy the feasibility condition  
19 | for confirmation of a plan of adjustment. One, liquidate  
20 | Cobra's claim in advance of the confirmation, or, two,  
21 | establish a cash reserve in the aggregate amount of Cobra's  
22 | asserted claim. The government parties argue that the outcome  
23 | of the criminal matter may be determinative of Cobra's  
24 | entitlement to administrative expense treatment of its claim,  
25 | because it could trigger additional contract defenses or FEMA

1 cost disallowances under 2 CFR § 200.339.

2           The government parties also argue that the Stay  
3 should remain in place until a cost analysis and determination  
4 memorandum can be issued by FEMA concerning the second  
5 contract, asserting that the memorandum concerning the review  
6 of the first contract demonstrates the utility of such FEMA  
7 scrutiny. The government parties argue that the FEMA cost  
8 analysis mitigates the need for costly discovery and motion  
9 practice.

10           Finally, the government parties argue that the  
11 liquidation of Cobra's administrative expense claim is not  
12 necessary in advance of PREPA's plan confirmation process,  
13 because a plan of adjustment can be confirmed with an adequate  
14 reserve held in abeyance until Cobra's claim is adjudicated.

15           The Court has considered these arguments carefully.  
16 The Court has previously held in this matter that the  
17 adjournment of the criminal trial alone does not justify  
18 modification of the Stay Orders. See In re Financial  
19 Oversight and Management Board for Puerto Rico, 617 B.R. 173,  
20 180 (D.P.R. 2020).

21           Here, although a trial date is not currently  
22 scheduled, the Court is satisfied that the ongoing discovery  
23 motion practice and conferencing indicates that the criminal  
24 case is moving forward toward resolution, and that such  
25 resolution may be significant in the resolution of the

1 Administrative Expense Motion.

2           The lack of a trial date does not, accordingly,  
3 warrant termination of the litigation stay. As the Court  
4 recognized in its February 3rd, 2020, Order, the Court must  
5 evaluate all aspects of the current factual and procedural  
6 landscape in considering whether the Stay should be lifted or  
7 maintained. It is undisputed that FEMA's cost analysis and  
8 determination memorandum concerning the first contract was a  
9 comprehensive review of expenses that are contemplated in the  
10 Administrative Expense Motion.

11           FEMA's administrative process allows for an  
12 investigation into Cobra's expenses, a cost analysis with the  
13 issuance of a determination memorandum, and an avenue for  
14 administrative appeal of any adverse finding. Thus, FEMA's  
15 investigation reduces the need for extensive discovery to  
16 resolve disputed amounts for which Cobra seeks administrative  
17 expense treatment.

18           While it is true that the timeline of the criminal  
19 prosecution and the anticipated timeline of the FEMA  
20 investigation have changed, Cobra has not demonstrated that  
21 there has been a material change warranting modification of  
22 the stay of litigation in connection with any aspect of the  
23 Administrative Expense Motion. Rather, the Court concludes  
24 that the relevant factors weigh in favor of maintaining the  
25 Stay of this matter.

1           The parties agree that if Cobra's administrative  
2 expense claim has not yet been allowed or is disputed as of  
3 the Plan of Adjustment's effective date, PREPA could satisfy  
4 confirmation requirements, including feasibility, by  
5 establishing a disputed claims reserve for the administrative  
6 expense claim.

7           The Court agrees that a plan of adjustment can be  
8 feasible absent the liquidation of an administrative expense  
9 claim. However, at the time of confirmation, PREPA's claims  
10 reserve must contain sufficient assets to allow creditors to  
11 recover on their claims and ensure equal treatment for  
12 similarly situated creditors. *Plan Committee of Northwestern*  
13 *Corporation v. Northwestern Corporation* from *In re*  
14 *Northwestern Corporation*, 362 B.R. 131, 134-35 (D. Del. 2007).

15           Importantly, PREPA has not filed a proposed plan of  
16 adjustment at this time. PREPA's ability to fund a reserve or  
17 resolve the claim, and issues regarding the appropriate  
18 magnitude of the claim, can be addressed in the context of  
19 confirmation, by which time further developments in the  
20 criminal case and the FEMA investigation may have helped to  
21 narrow the issues and the need for extensive discovery.

22           I note, however, that I am disturbed by the  
23 discontinuity between the views of counsel regarding whether  
24 there is ongoing informal interaction that -- in terms of  
25 information exchange and requests for specific information

1 that can help to move this process along, even while the  
2 formal litigation stay is in place.

3 I do expect of the parties that there will be genuine  
4 engagement of the sort, and that that will be an element of  
5 the next status report. Accordingly, the Court will enter an  
6 appropriate order denying the motion, and the parties are  
7 directed to file a status report by January 19, 2022, at 5:00  
8 PM Atlantic Standard Time.

9 Thank you.

10 MR. QURESHI: Thank you, Your Honor.

11 THE COURT: The next item on the Agenda is argument  
12 of the Individual Bondholders Motion for Appointment of a  
13 Committee to Represent Retail Investors in Connection with the  
14 Confirmation of the Plan, and I have as first speaker for  
15 seven minutes the movant, Mr. Peter Hein, who is representing  
16 himself.

17 MR. HEIN: Yes, Your Honor. Can you hear me?

18 THE COURT: Yes, I can. Good morning, Mr. Hein.

19 MR. HEIN: Thank you. Good morning.

20 I want to start with the Oversight Board's PSA  
21 joinder solicitation, because this is a new development  
22 occurring after I submitted my reply papers. I submitted  
23 exhibits pertinent to this in docket 17649 yesterday.

24 The Oversight Board has doubled down on its coercion  
25 of retail investors that my motion papers have complained of.

1 The new PSA joinder solicitation expressly states it extends  
2 to individual retail investors. For retail investors, the  
3 deadline is effectively next Tuesday, August 10, 3:00 PM, as  
4 shown on my Exhibit A.

5 This new development shows both why a retail investor  
6 committee is needed now, and the need for additional relief to  
7 provide an opportunity for a retail investor committee to be  
8 constituted and engaged. The Court had set a timetable that  
9 was intended to provide over 60 days for creditors, including  
10 individual retail investors, to review the Court-approved  
11 Disclosure Statement and its exhibits -- there was about 2,700  
12 pages in materials in total -- and for creditors to consider  
13 whether to object to the Plan, and how to vote.

14 The Oversight Board is now unilaterally telling  
15 retail investors, if you want to be sure to get the full 1.321  
16 percent fee, as opposed to just having the possibility that  
17 you might get a retail support fee that is not certain and  
18 likely, as best I can tell, only half as much, the Oversight  
19 Board is telling investors, you must decide now, like in four  
20 business days.

21 Given the logistics of tendering bonds to a retail  
22 broker, the deadline is Tuesday, August 10, at 3:00 PM, four  
23 business days from now, not even the August 13th date in the  
24 solicitation. And that assumes individuals even learn about  
25 this PSA joinder solicitation before the deadline. To my



1 knowledge, the Oversight Board has not mailed or even e-mailed  
2 this PSA joinder solicitation to individual investors.  
3 Pursuant to the PSA, section 5.1, joinder of a PSA expressly  
4 commits one to vote for the Plan.

5 This is like in section 5.1. You are committed to  
6 vote for the Plan and support for confirmation. An individual  
7 cannot join the PSA and then change their mind. By joining,  
8 the individual also commits to the terms of the -- terms of  
9 the PSA itself.

10 The Oversight Board has unilaterally adopted this  
11 course of process and effectively short-circuited the 60 plus  
12 day process the Court has just ordered. The Court -- the  
13 Oversight Board did not move the Court for permission to do  
14 this. There was no advanced Court approval for this. There  
15 is nothing about the PSA joinder solicitation in the orders  
16 the Court has just signed concerning the Disclosure Statement,  
17 voting, and confirmation procedures.

18 The Oversight Board -- excuse me. The Oversight  
19 Board's solicitation of individual retail investors to join  
20 the PSA is also contrary to the very terms of the PSA itself.  
21 The PSA provisions do not contemplate that retail investors  
22 will be subjected to a coercive joinder solicitation. And PSA  
23 excerpts are in Exhibit D of my submitted exhibits, and I  
24 direct Your Honor in particular to docket 17649, page 22 of  
25 29. That's 22 of 29.

1                   PSA section 2.2(a)(i), concerning exchange into new  
2 CUSIPs, states in the provided, however, clause that GO bonds  
3 and PBA bonds held by retail investors "need not be tendered  
4 and exchanged."

5                   PSA section 2.3 provides that a PSA joinder  
6 solicitation would be directed to those with in excess of one  
7 million face amount of bond. And the PSA provides that the  
8 Proposed Plan, based on the PSA, will provide for separate  
9 retail classes defined -- for retail investors defined as  
10 holding one million dollars or less.

11                  Now, last week, Mr. Rosen said that if retail  
12 investors do not join the PSA, well, they still get the retail  
13 support fee, but the Oversight Board has still not provided  
14 the information required to calculate the potential retail  
15 fee, including the size of holdings of PSA creditors versus  
16 retail investors. And, as best I can tell, as I said, I think  
17 that fee is going to be only about half as much, and is  
18 contingent on the retail class vote. For any part that the  
19 retail class rejects, the PSA creditors end up getting roughly  
20 three quarters of the fee, as best I can tell.

21                  (Sound played.)

22                  MR. HEIN: Mr. Rosen last week said, oh, we have to  
23 exchange CUSIPs, but there's been no showing that the CUSIP  
24 exchanges must occur by August 13th. The Oversight Board  
25 itself expressly reserves the right to extend, and the PSA

1 does not contemplate a CUSIP exchange for individuals before  
2 the date for voting and confirmation.

3 This type of coercive maneuver would never have  
4 occurred if there was a retail investor committee. To ensure  
5 a level playing field for retail investors, the Court needs  
6 to, first, order the appointment of such a committee, and,  
7 second, to effectuate the objective supply function, order  
8 that the August 13th deadline for retail investors to respond  
9 to this PSA joinder solicitation be pushed back at least to  
10 confirmation. This would allow the retail investor committee  
11 to be organized and to engage with the Oversight Board.

12 With every other group in this case, there's been a  
13 dialogue, the retirees, the unions, the institution  
14 bondholders and hedge funds, and all of them have either  
15 received tens of millions of dollars, or had their fees paid  
16 or provided as an administrative expense under the Plan. But  
17 with retail investors, eight classes under the Plan, there's  
18 been no committee and no dialogue. There's been no one  
19 representing the retail investors as part of the Plan  
20 negotiations.

21 So, respectfully, Your Honor, I would ask the Court  
22 order the appointment of a retailer investor committee, and  
23 direct the Oversight Board to push back the August 13th PSA  
24 joinder solicitation deadline, so the retail investor  
25 committee can be constituted and play its role to make sure

1 retail investors are represented.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Hein. I now have in  
4 opposition Mr. Bienenstock or Mr. Rosen for the Oversight  
5 Board for eight minutes.

6 MR. ESSES: Good morning, Your Honor. Joshua Esses  
7 from Proskauer Rose. I will be beginning the opposition, if  
8 not finishing it as well.

9 THE COURT: Good morning. Good morning, Mr. Esses.  
10 You may proceed.

11 MR. ESSES: Thank you, Your Honor. Your Honor,  
12 Joshua Esses of Proskauer Rose for the Oversight Board.

13 Your Honor, I'll start with a very brief overview,  
14 and then I'll go to the issue that Mr. Hein has raised in his  
15 discussion today and in his papers. Briefly, the Oversight  
16 Board opposes the motion and believes it should be denied, as  
17 a retail committee is not necessary to ensure adequate  
18 representation of retail creditors.

19 The standard before a Court reviewing a motion to  
20 appoint a statutory committee is permissive and provides that  
21 a Court may order the additional appointment of a committee if  
22 necessary to assure adequate representation of creditors.  
23 This is a high standard, and it's not met here.

24 The motion and Mr. Hein's discussion relitigates many  
25 of Mr. Hein's issues with these Title III cases, the Plan, and

1 the Disclosure Statement, the latter of which an order has  
2 been entered with respect to its provision of adequate  
3 information as provided for by the Bankruptcy Code.

4 I'll try to go through these concerns one by one to  
5 explain why none should trouble the Court, nor any retail  
6 bondholder, let alone give rise to concerns about adequate  
7 representation of the retail investor classes. I'll start  
8 with the PSA, and the consummation costs, and the joinder,  
9 which is discussed just now and in a motion.

10 Mr. Hein objects to basically the entire structure  
11 with respect to the PSA and the payments of restriction fees  
12 to parties to the Plan Support Agreements, but we think not  
13 only is this process fair with respect to retail holders --  
14 retail holders are actually advantaged as compared to  
15 institutional holders, because they get two bites at the apple  
16 with respect to restriction fees.

17 First, retail holders agree to exchange their bonds  
18 by the August 13th exchange offer date, can receive the same  
19 exact restriction fee being received by the bondholder parties  
20 to the GO-PBA Plan Support Agreement, but if they don't make a  
21 decision by that point, they have a second opportunity to get  
22 the restriction fee by having their class vote to accept the  
23 Plan and receiving their allocable share of the retail support  
24 fee.

25 You know, Mr. Hein objects that this fee is coercive

1 and contingent, because the amounts paid to any retail holder  
2 will depend on how many holders are entitled to such fee,  
3 among other concerns. This is a normal construct in  
4 bankruptcy proceedings, and the Oversight Board will show that  
5 the retail support fee is permissible under PROMESA and  
6 applicable law.

7 And for what it's worth, Mr. Hein can always object  
8 to the payment of these fees in the manner the Oversight Board  
9 contemplates in connection with Plan confirmation. He does  
10 not need a committee to do so.

11 On the timing of the tender offer, bondholders are  
12 given 17 days to determine whether or not they desire to sign  
13 up to the PSA and receive the correlative restriction fees.  
14 You know, Mr. Hein points out that these documents weren't  
15 mailed to individuals. Well, they were posted on EMMA, and  
16 included there a summary of the exchange offer for investors  
17 to review, as well as for the PSA itself.

18 Further, it is traditionally the role of the broker,  
19 dealer, or other financial advisor to the investors, who is a  
20 fiduciary for those bond investors, to explain the options  
21 available to retail holders, and that's who Mr. Hein and other  
22 holders should look to in understanding their options with  
23 respect to the PSA, the financial advisors, you know, looking  
24 for them, or who they've been using.

25 With respect to pushing out the date for the PSA

1 joinders, I'll say only that, you know, the date set forth is  
2 the date that all the parties understand. It's the date  
3 that's gone out in the marketplace to investors, and, you  
4 know, we don't want to move that date.

5 And as I'm sure you can understand, in these cases  
6 and in any other, Your Honor, there's a real desire for  
7 finality. We want to move this process along fairly, and  
8 efficiently, and without confusion, and one delay often begets  
9 another. And we do not believe it's appropriate to move the  
10 August 13th deadline.

11 I'll talk a little bit about some of the other  
12 concerns raised in the motion and the reply. First, with  
13 respect to bond splintering, the motion complains that retail  
14 investors are receiving splintered bonds in return for single  
15 bond claims, and this harms the marketability of the bond. A  
16 couple thoughts on this. First, every bondholder, large or  
17 small, is receiving splinter bonds, and this was done to  
18 maximize returns to all bondholders. It is explained in the  
19 Oversight Board's Supplemental Omnibus Reply in Support of  
20 Approval of the Disclosure Statement.

21 Municipal governments, unlike, you know, corporate  
22 debt issuers, issue amortizing debt, not both -- maturity  
23 debt. And this is on a regularly scheduled basis over a  
24 duration that varies generally between 20 to 40 years. And  
25 they do this both to satisfy bond investors' appetites for

1 different maturity dates of the bonds they are investing, as  
2 well as to smooth out the cash flow the municipality has  
3 available to pay debt service. And it's, you know, our belief  
4 that by structuring the bonds this way pursuant to the Plan --

5 (Sound played.)

6 MR. ESSES: -- it oversees at least recoveries by  
7 about two percent for all bondholders.

8 Second, at the dollar amounts discussed here at the  
9 retail investor level, whether it's 13 bonds back or one,  
10 100,000 or 7, these are already trading at lower values than  
11 larger blocks, because of the nature of the bond market. You  
12 know, retail investors bought into this relative trading  
13 deficit when they bought at the beginning. They're not being  
14 further disadvantaged by this splintering.

15 A couple other points in my remaining time. Mr. Hein  
16 laments that the various ad hoc groups are not fiduciaries to  
17 the retail investor committee, and that they don't have a  
18 fiduciary, but that standard is not found in the Bankruptcy  
19 Code. In the case law, fiduciary obligation is not necessary  
20 for holders of PBA and GO bonds to have benefited from the  
21 various ad hoc groups' vigorous representation of their  
22 interests, even the interests of holders like Mr. Hein, who is  
23 not paying any legal fees in connection with their work and  
24 would seek to undue the settlements, and to which those groups  
25 and their members have entered. And we think that the



1 interests of retail bondholders and institutional bondholders  
2 for PBA and GO are almost, if not completely, coextensive as  
3 far as increasing recoveries to all holders, be they large or  
4 small.

5 I think I'll pause there to see if there's any  
6 concern the Court would like me to address that we haven't  
7 specifically gone through.

8 THE COURT: The consummation fees, and I'm forgetting  
9 the other -- the consummation costs and restriction fees, are  
10 those going to be treated as administrative expenses so that  
11 the parties will be required to demonstrate that they are  
12 actually and necessarily incurred?

13 (Sound played.)

14 MR. ROSEN: Your Honor, this is Brian Rosen. If I  
15 could address that?

16 THE COURT: Yes.

17 MR. ROSEN: Sorry, Mr. Esses.

18 The answer is yes, Your Honor. Just like we did in  
19 connection with COFINA, there will be a presentation regarding  
20 the consummation of costs that have been incurred.

21 But I would also like to just address one specific  
22 question that was raised earlier, or stated by Mr. Hein. The  
23 reason for the deadline for the actual tender and exchange is  
24 so that we can then continue with the actual solicitation of  
25 acceptances and rejections to the Plan.

1           By having the closing date or the settlement date for  
2 the tender and exchange, that allows us to lock in those  
3 CUSIPs, Your Honor, and make sure that we are getting the  
4 votes from the people who are appropriate to accept or reject  
5 the Plan. So it's a day follows night or a night follows day  
6 thing, Your Honor, where we have to close the tender and  
7 exchange prior to the actual commencement of the solicitation  
8 to -- the acceptances and rejections to the Plan itself.

9           THE COURT: Thank you. Thank you both.

10           At this point, I will turn to Mr. Despins for two  
11 minutes.

12           MR. DESPINS: Thank you, Your Honor. Good morning  
13 again. Luc Despins with Paul Hastings for the Official  
14 Committee.

15           The Official Committee objects to the motion seeking  
16 the appointment of a committee for retail holders, and we -- I  
17 think that there's a practical way to resolve the issues here.  
18 I think that there clearly are maybe communication issues,  
19 because of the number of retail holders and all that, but I  
20 think the Court has the power, for example, to direct the  
21 Oversight Board to delegate to their claims agent a team  
22 there, or a person, the job of answering calls and responding  
23 to e-mails from retail holders, so that there's one central  
24 point of communication, because I think that most of what  
25 Mr. Hein is raising are communication issues and

1 implementation issues.

2           To the extent he is seeking a committee to fight  
3 confirmation, we obviously object to that, but I think the  
4 Court has the power here to alleviate the concerns that he  
5 raised, which may very well be accurate, about the fact that  
6 many retail holders don't have the information they need on a  
7 timely basis. And I think that the Oversight Board's claim  
8 agents, you know, if they designate one person to do that,  
9 could very well alleviate those concerns. So that would be  
10 our suggestion. But obviously on the merits, we believe that  
11 no official committee should be appointed.

12           Thank you, Your Honor.

13           THE COURT: Thank you.

14           Before I call Mr. Hein back, it's my impression and  
15 understanding that there is a phone line to Prime Clerk that  
16 is publicized for people who have questions, and I work on the  
17 assumption that on the other end of that phone line would be  
18 people who could supply appropriate information or connect  
19 with someone who can supply appropriate information.

20           Counsel for the Oversight Board, will you tell me  
21 whether I'm right or wrong on that?

22           MR. ROSEN: Your Honor, it's Brian Rosen again.

23           You are absolutely correct, Your Honor. We do have  
24 that available for anyone and everyone who seeks or has any  
25 questions. Likewise, Your Honor, we frequently post FAQs,

1 frequently asked questions, to try and be responsive to  
2 something that -- perhaps if Mr. Hein raised a question, to  
3 make sure that not only Mr. Hein knows the answer, but the  
4 greater population knows it as well.

5 We post those FAQs and their answers online so that  
6 people can get access to them, and we try to promote those  
7 through EMMA, sometimes DTC, but certainly on the websites,  
8 Your Honor.

9 THE COURT: Thank you.

10 Now I'll turn back to Mr. Hein for three minutes.

11 MR. HEIN: Yes, Your Honor. Thank you, Your Honor.

12 I heard no response at all to my point that this  
13 coercive solicitation to retail investors is contrary to the  
14 terms of the PSA itself. There was no response on that.

15 There was no response to my point that the coercive  
16 deadline of August 10th effectively is not something the Court  
17 has authorized.

18 There's no response to the fact that this is contrary  
19 to the 60 day plus process with the Disclosure Statements so  
20 people have an opportunity to obtain, through the Disclosure  
21 Statement and otherwise, the information they need to make an  
22 informed decision.

23 The notion that retail brokers are going to solve  
24 this problem is completely unrealistic. Those retail brokers  
25 are in the same boat as individuals not having an adequate

1 opportunity to inform themselves.

2 The notion that the debtors' claims agent and a phone  
3 line will solve the problem, Your Honor, I think is just not  
4 realistic. For example, on basic questions of --

5 (Sound played.)

6 MR. HEIN: -- what will be the amount of the retail  
7 support fee, as compared to the restriction fee, what is the  
8 probability that someone will actually get the retail support  
9 fee, the phone representative is not going to be able to  
10 answer that question. That information hasn't been provided.

11 Tellingly, Your Honor, there has been absolutely no  
12 response to the point I made in my papers that the Oversight  
13 Board has not cited any case where adequate representation was  
14 satisfied by the existence of ad hoc committees that a movant  
15 was not a member of and which hold no fiduciary duty to the  
16 members.

17 There's also been no response to the fact that there  
18 is no other class comprised of individuals that is impaired  
19 and that does not have a committee or other arrangements in  
20 place to represent the members of that class. The Oversight  
21 Board talks about the vigorous representation by ad hoc  
22 groups, but as I point out in my reply, that vigorous  
23 representation ended up with the ad hoc groups. It impedes  
24 probably four times what are potentially being offered to  
25 retail investors, even on something like the debt service

1 fund.

2           You have the debt service fund removed from the Plan  
3 provisions at the last minute in order to pay additional fees  
4 to the people that were in effect negotiating with the  
5 Oversight Board. Fundamentally, what is necessary here is for  
6 a retail committee that can engage.

7           The retirees have a committee that's engaged. The  
8 unions have a committee that's engaged. The institutional  
9 investors and the hedge funds are receiving the consummation  
10 costs and restriction fees pro rata.

11           (Sound played.)

12           MR. HEIN: These are pro rata, simply prepared as a  
13 percentage. There is no reason retail investors should not,  
14 likewise, have a committee and be able to engage with the  
15 Oversight Board.

16           Thank you, Your Honor.

17           THE COURT: Thank you. I have one question for you.  
18 Is it your expectation that a committee counsel would provide  
19 individualized answers and legal advice to bondholders, to  
20 individuals bondholders?

21           MR. HEIN: No. The committee counsel -- the  
22 committee would be fiduciaries representing the members of the  
23 retail investor class. And I think that they would be  
24 providing information that would be appropriate for people in  
25 that class, but they're not -- they're not acting as

1 individual attorneys for any member of that class, anymore so  
2 than with the Retirees Committee or the UCC.

3 I don't think the UCC's counsel views themselves as  
4 representing the interests of particular individual unsecured  
5 creditors.

6 THE COURT: Thank you for making your understanding  
7 clear on that. As you've noted, there are a number of classes  
8 of bondholders. You're proposing one committee. Wouldn't  
9 some constituents of the committee have diametrically opposed  
10 interests to those of other members of the committee,  
11 depending on which bond issues they hold?

12 MR. HEIN: I respectfully don't think that is the  
13 case for a couple of reasons. One, the case law, which I've  
14 cited, recognizes that the members of the committee may have  
15 some differing interests, but, nevertheless, because the  
16 members of the committee have a fiduciary duty to the overall  
17 constituency, that that is something where, you know, it  
18 works.

19 And clearly here the purpose of the committee would  
20 not be to be fighting issues as to the priority of one  
21 particular series of bonds over another, because clearly there  
22 would be attention, and it is not something the committee  
23 should be attempting to do. The purpose of the committee  
24 would be to address those matters that are of common interest  
25 to retail investors.

1                   And frankly, Your Honor, and I think what's happened  
2 here with this, really, I think this PSA joinder thing, even  
3 contrary to the terms of the PSA -- it's not even authorized  
4 by the PSA, that people are being asked to join. Something  
5 like this would never have happened if there was a retail  
6 investor committee in place that could be like other  
7 committees engaged in the dialogue with the Oversight Board,  
8 where they would have to be dealt with because they're  
9 recognized.

10                   One individual, like myself, no matter how vocal, can  
11 just be brushed aside, but a committee would have to be dealt  
12 with. Their concerns would have to be addressed. If they  
13 weren't worked out, they would come to the Court obviously.  
14 But I think that one reason one has had these ongoing problems  
15 in this case with retail investors is because no one is  
16 representing them.

17                   And, again, because these ad hoc committees -- as I  
18 point out in my papers, the ad hoc committees disclaim,  
19 expressly disclaim, they say they have no fiduciary duty to  
20 others. They have no responsibility to others. They've been  
21 very up front with that.

22                   And so we've had a situation here where issues that  
23 are important and retail investors -- it's eight classes here.  
24 There are thousands and thousands of individuals. And I also  
25 think just from, frankly, the appearance of justice in this



1 case, if one does not have a situation where retail investors  
2 are appropriately represented as part of the process, I think  
3 that creates serious appearance issues as well.

4 Hedge funds who expressly disclaim any responsibility  
5 to the retail investors cannot be held out as vigorous  
6 representatives of those individuals they've disclaimed  
7 responsibility for. And I think that a retail investor  
8 committee here, frankly, and I understand where Your Honor's  
9 predilections are, but I think this actually could be a very  
10 constructive force. I think it could be implemented promptly.  
11 A very constructive force in putting the individual components  
12 of these cases on a basis that is sounder and more  
13 appropriate, and, frankly, for everybody's benefit.

14 THE COURT: Thank you, Mr. Hein.

15 We have now reached the time where we need to break  
16 for lunch, and so I will make my ruling on this motion when we  
17 reconvene. Please be back on the phone lines and ready to  
18 proceed with the remaining matters at 10 past 1:00, that is,  
19 1:10 Atlantic Standard Time, which is the same as Eastern  
20 Daylight Time. I thank you all.

21 Make sure that you disconnect from the Court  
22 Solutions system and call back in again for 1:10. Thank you.

23 We are adjourned.

24 (At 11:49 AM, recess taken.)

25 (At 1:09 PM, proceedings reconvened.)

1 THE COURT: Good afternoon. This is Judge Swain  
2 speaking.

3 MS. NG: Good afternoon, Judge. This is Lisa.  
4 Everybody's here.

5 THE COURT: Thank you.

6 This is the continuation of the August Omnibus  
7 Hearing in the cases jointly administered under the lead  
8 number 2017-3283, *In re: Financial Oversight and Management*  
9 *Board*. So I am now prepared to rule on Mr. Hein's Motion for  
10 the Appointment of a Committee.

11 Before the Court is the *Motion of Individual*  
12 *Bondholder for an Order Directing the Appointment of a*  
13 *Committee to Represent Retail Investors in the Eight Retail*  
14 *Investor Classes in Connection with the Proposed Plan and in*  
15 *Proceedings Related to Confirmation* (Docket Entry No. 17221 in  
16 Case No. 17-3283. And I'll refer to it as the "Motion").

17 The Motion requests entry of an order directing the  
18 appointment of an official committee of holders of  
19 Commonwealth and PBA bonds, and I'll refer to the proposed  
20 committee as the "Bondholder Committee". Movant's proposed  
21 Bondholder Committee would be comprised of individuals who  
22 each hold up to one million dollars in the aggregate of such  
23 bonds.

24 The Court has carefully considered the pleadings  
25 submitted by the parties concerning the Motion, as well as the

1 arguments earlier today. For the reasons that follow, the  
2 Motion is denied.

3           Section 1102(a) of the Bankruptcy Code governs the  
4 formation of committees of creditors. Section 1102(a)(1)  
5 provides that "the United States Trustee shall appoint a  
6 committee of creditors holding unsecured claims and may  
7 appoint additional committees of creditors . . . as the United  
8 States trustee deems appropriate." 11 U.S.C. § 1102(a)(1).  
9 Section 1102(a)(2) provides that a Court may also appoint  
10 additional committees of creditors "if necessary to assure  
11 adequate representation of creditors." 11 U.S.C. §  
12 1102(a)(2). A movant seeking appointment of an additional  
13 committee must demonstrate that the committee is "necessary"  
14 for adequate representation. This is "a high standard that is  
15 far more onerous than if the statute merely . . . [required]  
16 that a committee be useful or appropriate." In re SunEdison,  
17 Inc., 556 B.R. 94, 103 (Bankr. S.D.N.Y. 2016). In exercising  
18 their discretion, courts also consider practical  
19 considerations, such as the complexity of a case and the costs  
20 that would be associated with appointing additional  
21 committees. In re Wang Labs, Inc., 149 B.R. 1, 2 (Bankr. D.  
22 Mass. 1992). In particular, courts are sensitive to the  
23 reality that the "appointment of additional committees is  
24 closely followed by applications to retain" lawyers and other  
25 professionals. In re Wang Labs, 149 B.R. at 4.

1                   Movant has not met the high burden of demonstrating  
2   that the appointment of a Bondholder Committee is "necessary"  
3   as required by section 1102(a)(2), nor that the court should  
4   exercise its discretion to direct appointment of a Bondholder  
5   Committee. Although these Title III cases are complex,  
6   sophisticated parties represented by able counsel hold the  
7   same bonds owned by Mr. Hein and other retail investors, and  
8   through the course of the Title III cases, those parties have  
9   vigorously defended the validity and value of those bonds.  
10   Although Movant is correct that active ad hoc groups and  
11   institutional investors with significant Commonwealth and PBA  
12   bond holdings have settled their disputes and now support the  
13   proposed Plan of Adjustment, Movant has failed to demonstrate  
14   that their support arises out of anything other than a  
15   calculated cost benefit analysis that takes into account the  
16   risks and burdens of litigating the validity and priority of  
17   their claims, including the resolution of complex  
18   intercreditor disputes that have been queued up in a host of  
19   contested matters and adversary proceedings. Even if the  
20   supporting creditors do not purport to represent the interests  
21   of retail bondholders and do not have fiduciary duties towards  
22   retail bondholders, their support for the proposed Plan of  
23   Adjustment implies their belief that the Plan maximizes value  
24   for the benefit of bondholders.

25                   The existence of "Consummation Costs" and

1 "Restriction Fees" in the plan support agreements and proposed  
2 Plan of Adjustment do not demonstrate that the creditors'  
3 interests are not aligned with those of Retail Investors. The  
4 Plan contemplates that payment of these amounts will  
5 compensate creditors for contributions they have made and  
6 obligations they have incurred in furthering the progress of  
7 these Title III cases, and the Oversight Board will be  
8 required in connection with the Plan confirmation process to  
9 demonstrate that these amounts are justified as administrative  
10 expenses that are properly payable under the Bankruptcy Code.  
11 Putting aside such administrative expenses, Movant does not  
12 appear to contend that the Plan contemplates treatment of the  
13 claims of institutional investors in a manner different than  
14 or superior to the treatment proposed for Retail Investors.

15           Movant also objects to the structure of the bonds  
16 that would be issued under the proposed Plan of Adjustment,  
17 takes issues with the fact that each of the Retail Investor  
18 classes in the proposed Plan would not receive retail support  
19 fees if that class votes to reject the Plan, and also takes  
20 issue with several other substantive provisions of the  
21 proposed Plan of Adjustment. However, the existence of Plan  
22 provisions that the Movant disagrees with or objects to does  
23 not demonstrate that the creditors involved in negotiating the  
24 Plan did not use their best efforts to maximize value for the  
25 benefit of bondholders. Movant is free to raise objections to

1 | these provisions in connection with Plan confirmation, and the  
2 | Court will consider such objections in due course.

3 |         Movant's references to the complexity of the  
4 | Disclosure Statement and solicitation materials are also  
5 | insufficient to demonstrate a lack of adequate representation.  
6 | The Disclosure Statement has already been reviewed carefully  
7 | by the Court, and consistent with certain objections raised by  
8 | Mr. Hein, the Court required certain changes to enhance the  
9 | disclosure proposed by the Oversight Board before approving  
10 | the Disclosure Statement and solicitation materials.  
11 | Moreover, Committee counsel do not act as lawyers to each  
12 | creditor who is a constituent, and Movant has not explained  
13 | how the appointment of a Bondholder Committee at this point  
14 | would meaningfully affect bondholders' understanding of the  
15 | disclosure and solicitation materials.

16 |         [Nor do the Movant's objections today concerning the  
17 | Debtors' offer to permit retail bondholders to become parties  
18 | to the Amended and Restated Plan Support Agreement demonstrate  
19 | inadequate representation or the necessity of a committee for  
20 | retail investors. The Movant can raise his objections to the  
21 | manner in which support was solicited in connection with Plan  
22 | confirmation proceedings if he so desires.]

23 |         Accordingly, the Motion is denied, and the Court will  
24 | enter an appropriate order.

25 |         Thank you. The next set of Agenda items are

1 objections to claims. The first one that was originally on  
2 the list was the 314th Omnibus Objection, and I understand  
3 that that proof of claim has been withdrawn.

4 I'd ask that counsel for the Oversight Board come on  
5 at this point and tell me where we need to start with this  
6 section of the Agenda.

7 MS. STAFFORD: Good afternoon, Your Honor. This is  
8 Laura Stafford of Proskauer Rose on behalf of the Financial  
9 Oversight and Management Board for Puerto Rico.

10 As Your Honor noted, the proof of claim that was  
11 originally objected to via the 314th Omnibus Objection was  
12 withdrawn, and we noted Your Honor's Order entering the  
13 stipulation and agreed order regarding the withdrawal of that  
14 proof of claim this morning.

15 There are additional pro se respondents who have  
16 responded to the 314th Omnibus Objection. I understand that  
17 those responses will be taken up at a later time. And so at  
18 this stage, Your Honor, I think it would be most important to  
19 begin with the 321st Omnibus Objection, which is the next item  
20 on the Agenda.

21 THE COURT: Very well. Thank you.

22 That is docket entry no. 16647 in case 17-3283; is  
23 that correct?

24 MS. STAFFORD: That is correct, Your Honor.

25 THE COURT: Very well. Please proceed, Ms. Stafford.

1 MS. STAFFORD: Thank you, Your Honor.

2 As Your Honor noted, the 321st Omnibus Objection is  
3 filed at ECF no. 16647, and this objection seeks to disallow  
4 in their entirety proofs of claim associated with either  
5 deposits held by the Government Development Bank but  
6 transferred to the Public Entity Trust pursuant to the  
7 Qualifying Modification, or bonds issued by the Government  
8 Development Bank that were subject to the Qualifying  
9 Modification and, accordingly, have been canceled and  
10 released.

11 One response to this objection was received. It was  
12 filed by the Puerto Rico Land Administration at ECF no. 17207,  
13 and it addresses Proofs of Claim Nos. 50438 and 73021.

14 The response does not dispute that Proof of Claim No.  
15 73021 asserts the deposits which are designated deposits  
16 pursuant to the Qualifying Modification, and that they are,  
17 therefore, no longer a liability of the Commonwealth.

18 With respect to Proof of Claim No. 50438, the Puerto  
19 Rico Land Administration states that it continues to receive  
20 deposits, account statements, statements from the Economic  
21 Development Bank of Puerto Rico reflecting that certain funds  
22 are deposited with the Economic Development Bank in favor of  
23 the Puerto Rico Land Administration. In support of that  
24 assertion, the Puerto Rico Land Administration has filed  
25 several account statements reflecting deposits held by the



1 Puerto Rico Land Administration at the Economic Development  
2 Bank.

3 As set forth in the Commonwealth reply, however,  
4 documents shown submitted in connection with Proof of Claim  
5 No. 50438 state that that claim asserts liabilities associated  
6 with funds that were initially deposited at the Economic  
7 Development Bank, but was subsequently returned to the GDB.  
8 Neither the claim itself, nor the claimant's response provides  
9 any indication that the funds deposited at the Economic  
10 Development Bank are the same funds asserted by Proof of Claim  
11 No. 50438.

12 In any event, as is also set forth in the  
13 Commonwealth reply, the Economic Development Bank is not a  
14 Title III debtor, and is, instead, a separate entity legally  
15 distinct from the Commonwealth and each of the other Title III  
16 debtors. Accordingly, irrespective of whether Proof of Claim  
17 No. 50438 asserts funds deposited at the Economic Development  
18 Bank or funds previously deposited at the GDB, the  
19 Commonwealth is simply not liable for this claim.

20 Thank you, Your Honor. And I'd reserve the remainder  
21 of my time for rebuttal.

22 THE COURT: Thank you.

23 The Agenda allocates six minutes now to Carlos  
24 Cardona Fernandez to speak for the Puerto Rico Land  
25 Administration.

1 Mr. Cardona, are you there? Mr. Cardona Fernandez?

2 Please unmute your phone and also unmute the dashboard if you  
3 are also following along on a computer.

4 (No response.)

5 THE COURT: I am not hearing a voice.

6 Ms. Ng, is Mr. Cardona Fernandez muted?

7 MS. NG: Judge, is that Carlos Cardona?

8 THE COURT: Carlos E. Cardona Fernandez.

9 MS. NG: Okay. I have a Carlos Cardona. I just  
10 unmuted him.

11 MR. CARDONA FERNANDEZ: Yes. Your Honor, can you  
12 hear me now?

13 THE COURT: Yes, I can hear you now.

14 MR. CARDONA FERNANDEZ: Good afternoon, Your Honor.

15 This is Carlos Cardona Fernandez on behalf of the Puerto Rico  
16 Land Administration.

17 Our response is pretty straight forward. Our  
18 position is that the uncontested evidence on the record  
19 establishes that the funds in connection with claim no. 50438,  
20 in the amount of \$1,129,800.76, that those funds are deposited  
21 with the Economic Development Bank, and, hence, the objection  
22 raised by the Commonwealth is incorrect in that sense.

23 Because of that, those monies are deposited in favor of the  
24 Puerto Rico Land Administration, and are not subject to Title  
25 III.

1           That is our contention, and that's what we argued in  
2   our latest motion that we filed on Monday requesting that the  
3   motions be ruled on the papers, the issue be ruled on the  
4   papers. That is our position, Your Honor.

5           THE COURT: Let me ask you a matter of clarification,  
6   because the Objection to Claim, as asserted by the Oversight  
7   Board, doesn't argue who the money ultimately belongs to. It  
8   is a question of whether the Commonwealth of Puerto Rico, as  
9   opposed to some other entity that's not a debtor in these  
10   Title III proceedings, would be the entity that you would need  
11   to look to for satisfaction of your claim for that money.

12           So, as I understand her, Ms. Stafford is saying that  
13   the Economic Development Bank is not the Commonwealth, it's  
14   not a debtor in these proceedings, and, similarly, the GDB is  
15   a separate entity. So what the Oversight Board is looking for  
16   here is a ruling that says 50438 and 73021 are not proper  
17   claims as against the Commonwealth in the Commonwealth Title  
18   III proceeding.

19           Do you disagree with that proposition of the  
20   Oversight Board?

21           MR. CARDONA FERNANDEZ: Yeah, Your Honor -- we have  
22   to agree with that, because that's what they argued in the  
23   latest reply. That's why we requested that the issue be ruled  
24   on the papers when we filed our motion, our motion on Monday,  
25   Judge. Precisely why we stated that.

1 THE COURT: Thank you. That was not completely clear  
2 to the Court from the Monday filing, and so --

3 MR. CARDONA FERNANDEZ: Uh-huh.

4 THE COURT: -- also that request was submitted so  
5 late, we'd already prepared for this argument. So that is why  
6 I required that the argument go forward. So if you have  
7 nothing further to say in that respect, with respect to this  
8 objection, I'll turn back to Ms. Stafford.

9 So, Ms. Stafford, I think you can come back. Thank  
10 you.

11 MS. STAFFORD: Thank you, Your Honor.

12 I think if I understood Mr. Cardona correctly, I  
13 think he's in agreement that these claims are not liabilities  
14 of the Commonwealth, and so far the Proof of Claim 50438  
15 asserts funds deposited at the Economic Development Bank,  
16 which is not a part of the Commonwealth. And in light of  
17 that, I think we are in agreement that these funds are -- that  
18 this claim is not a liability of the Commonwealth.

19 THE COURT: Thank you.

20 MR. CARDONA FERNANDEZ: That is correct, Your Honor.  
21 I have to agree on that, yeah.

22 THE COURT: Thank you for making that clear,  
23 Mr. Cardona Fernandez.

24 Now, I have references here in my notes on the  
25 pleadings that 50438 is in issue, and that the Commonwealth is

1 also seeking to disallow 73021. Ms. Stafford, can you explain  
2 what the status is as to 73021?

3 MS. STAFFORD: That's correct, Your Honor. 73021,  
4 it's our understanding that this claim asserts deposits which  
5 are designated deposits pursuant to the Qualifying  
6 Modification, and I don't believe that that was disputed by  
7 Mr. Cardona in his response. I believe he noted both claims  
8 were a part of the objection, but his only response related to  
9 50438.

10 THE COURT: And so --

11 MR. CARDONA FERNANDEZ: That is correct, Your Honor.  
12 I'm sorry. I'm sorry.

13 THE COURT: I was just going to ask you to tell me  
14 whether you agreed with that. So --

15 MR. CARDONA FERNANDEZ: No, Your Honor. That's what  
16 I was going to say. As to 73021, we didn't file a response,  
17 because we consent to what the Commonwealth argued with  
18 respect to that claim. That is a non-issue.

19 The issue was with 50438, the information that we had  
20 and the deposit account statement that we were receiving from  
21 the Economic Development Bank. So our response is only as to  
22 50438, not 73021.

23 THE COURT: On 50438, you now agree with the  
24 Oversight Board?

25 MR. CARDONA FERNANDEZ: I agree with the Oversight

1 Board that if the monies are deposited in favor of the Puerto  
2 Rico Land Administration with the Economic Development Bank,  
3 that they are not subject to Title III, and, hence, the Court  
4 should disallow obviously 50438, the proof of claim, then.

5 THE COURT: Thank you.

6 So the Court now rules that the 321st Omnibus  
7 Objection is sustained as to claim nos. 50438 and 73021 of the  
8 Puerto Rico Land Administration. Those claims are disallowed  
9 in their entirety, because they do not state a legal theory or  
10 basis on which liability could attach to a debtor in these  
11 Title III proceedings.

12 Ms. Stafford, does this ruling complete the  
13 resolution of all of the elements of the 321st Omnibus  
14 Objection?

15 MS. STAFFORD: It does, Your Honor. No additional  
16 responses were received.

17 THE COURT: Thank you. So would you submit a  
18 comprehensive proposed order disallowing the claims resolved  
19 by the Omnibus Objection?

20 MS. STAFFORD: We would be pleased to do so, Your  
21 Honor. Thank you.

22 THE COURT: Thank you.

23 Thank you, Mr. Cardona Fernandez.

24 MR. CARDONA FERNANDEZ: Thank you very much, Your  
25 Honor.

1 Thank you, Counsel.

2 MS. STAFFORD: Thank you.

3 MR. CARDONA FERNANDEZ: Have a good afternoon.

4 THE COURT: Good afternoon.

5 So what is the next Omnibus Objection that we're  
6 going to address, Ms. Stafford?

7 MS. STAFFORD: Of course, Your Honor. The next  
8 Omnibus Objection is the 335th Omnibus Objection, which was  
9 filed at ECF No. 17104. This objection seeks to disallow in  
10 their entirety proofs of claim that are duplicative of other  
11 proofs of claim asserted against the debtors.

12 One response was received. It was filed by Genesis  
13 Security Services at ECF No. 17408 with respect to Proof of  
14 Claim No. 174424. The response acknowledges that Proof of  
15 Claim No. 174424 is duplicative of another proof of claim  
16 filed against the debtors, and states that Genesis Security  
17 Services does not object to the disallowance of its claim.

18 And for that reason, Your Honor, we would ask the  
19 Court grant the objection and disallow the claim,  
20 notwithstanding the response.

21 THE COURT: Thank you.

22 Having reviewed the objection and response, the Court  
23 sustains the 335th Omnibus Objection as to claim no. 174424 of  
24 Genesis Security Services, Inc., and that claim is disallowed  
25 in its entirety as duplicative of claim no. 174436.

1                   Ms. Stafford, are you in a position to do a  
2 comprehensive proposed order at this point as to the 335th  
3 Omnibus Objection?

4                   MS. STAFFORD: We are, Your Honor. We will do so.

5                   THE COURT: Thank you. Let's go to the next Agenda  
6 item.

7                   MS. STAFFORD: Yes, Your Honor.

8                   The next item on the Agenda is the 340th Omnibus  
9 Objection, which was filed at ECF No. 17087. This objection  
10 also seeks to disallow in their entirety proofs of claim that  
11 were duplicative of other proofs of claim asserted against the  
12 debtors.

13                   Two claimants filed responses, and the first on the  
14 Agenda was filed by Sky High Elevators Corporation. Two  
15 responses were filed, one at ECF No. 17295, and another at ECF  
16 No. 17459, both with respect to Proof of Claim No. 173732.  
17 The responses contend that Proof of Claim No. 173732 is not  
18 duplicative of Proof of Claim No. 173742. Neither of the  
19 responses, however, identifies any relevant differences  
20 between the two proofs of claim, nor does it explain what  
21 different liabilities 173732 seeks to refer that Proof of  
22 Claim 173742 does not. Instead, the response contends that  
23 the debtors' request for additional information regarding  
24 Proof of Claim 173742 suggests that the debtors cannot have  
25 determined that the two claims are duplicative.



1           As set forth in our reply, however, Proofs of Claim  
2 173732 and 173742 were determined to be duplicative, because  
3 they assert the exact same liabilities in the exact same  
4 amount, and are based on the same exact documentation. The  
5 fact that debtors contacted counsel for Sky High Elevators to  
6 obtain additional documentation does not alter the fact that  
7 the two claims assert the same liabilities. Indeed, as stated  
8 earlier, claimants themselves have not provided any basis for  
9 the assertion that the claims are not duplicative.

10           And I would reserve the rest of my time for rebuttal,  
11 Your Honor, unless you'd like to hear the other response  
12 before we turn to counsel for claimant.

13           THE COURT: We will turn to counsel for Sky High  
14 Elevators, for whom we've allocated six minutes. Mr. David  
15 Roman, would you please unmute?

16           So you need to unmute your phone and the computer  
17 dashboard, if you're using the computer interface as well.

18           Ms. Ng, would you see if you can unmute Mr. Roman?

19           MS. NG: Judge, he's not on.

20           THE COURT: Oh. So David W. Roman is not on?

21           MS. NG: No. I don't see him on. He was on this  
22 morning, but not now.

23           THE COURT: All right. Ms. Stafford, would you then  
24 go on to discuss the second response?

25           MS. STAFFORD: Of course, Your Honor.

1           The second response was also filed by Genesis  
2 Security Services with respect to ECF -- with respect to Proof  
3 of Claim No. 174317, and it was filed at ECF No. 17408. The  
4 response, again, acknowledges that Proof of Claim No. 174424  
5 is duplicative of -- I'm sorry, 174317 is duplicative of  
6 another proof of claim filed against the debtors, and it  
7 states that Genesis Security Services does not object to  
8 disallowance of its claim.

9           Accordingly, we'd ask the Court to grant the  
10 objection and disallow the claim, notwithstanding the  
11 response.

12           THE COURT: Thank you.

13           Having reviewed the submissions, and on the basis of  
14 the presentation here, and in the absence of any additional  
15 oral response, the 340th Omnibus Objection is sustained as to  
16 claim nos. 173732 of Sky High Elevators Corporation, and  
17 174317 of Genesis Security Services; and those claims are  
18 disallowed in their entirety, because the claimants have not  
19 disputed that the claims are duplicative of claim nos. 173742  
20 and 174436 respectively.

21           Are we at the point where the debtor can prepare a  
22 comprehensive proposed order with respect to the 340th  
23 objection?

24           MS. STAFFORD: We are, Your Honor. We would be happy  
25 to do so.

1 THE COURT: Thank you, Ms. Stafford.

2 So let us go on to the next, which is the 345th I  
3 believe?

4 MS. STAFFORD: That is correct, Your Honor.

5 The 345th Omnibus Objection was filed at ECF No.  
6 17108, and it seeks to reclassify certain proofs of claim that  
7 asserted an incorrect or otherwise improper priority. We  
8 received a number of responses, three of which have been  
9 scheduled for hearing today.

10 The first of those was filed by or on behalf of  
11 Gisela Vazquez Rodriguez at ECF No. 17281 with respect to  
12 Proof of Claim No. 34338. Proof of Claim No. 34338 asserts  
13 liabilities purportedly arising out of confiscation of a  
14 vehicle. The claim attaches as supporting documentation a  
15 complaint initiating a lawsuit with respect to the intended  
16 vehicle, and a portion of a judgment in that lawsuit.

17 In response to the objection, Ms. Vazquez Rodriguez  
18 states that the judgment alone constitutes prima facie  
19 evidence of a secured claim. I have explained in the debtors'  
20 reply, however, judgments themselves are unsecured claims, and  
21 neither the claim nor the response provides evidence that  
22 claimants either filed or obtained a judicial means of  
23 securing the judgment.

24 Accordingly, we would ask the Court grant the  
25 objection and disallow the claim, notwithstanding the

1 response. And I understand that counsel did not intend to  
2 appear today, so unless the Court has questions, I would  
3 propose to move on to the next response on the Agenda.

4 THE COURT: So it was Counsel Ivonne Gonzalez  
5 Morales?

6 MS. STAFFORD: I believe she's here to address the  
7 third response on the Agenda, which was filed on behalf of the  
8 Group Wage Claimants.

9 THE COURT: Okay. Very well. So I will rule on the  
10 Gisela Vazquez Rodriguez element of the 345th Omnibus  
11 Objection.

12 Based on the submissions and the additional oral  
13 remarks here, the Court sustains the 345th Omnibus Objection  
14 as to claim no. 34338 of Gisela Vazquez Rodriguez, and that  
15 claim is reclassified as a general unsecured claim, because  
16 the claimant has cited no factual or legal basis for  
17 overcoming the presumption that the judgment obtained gives  
18 rise to a pre-petition general unsecured claim.

19 So you may now go on to the next one.

20 MS. STAFFORD: Thank you, Your Honor.

21 The second response that was received and scheduled  
22 for hearing today was filed by Rosa I. Orengo Rohena at ECF  
23 No. 17290 with respect to Proof of Claim No. 167999. I'm  
24 pleased to report for the record that the parties have reached  
25 an agreement to resolve this claim. A stipulation and agreed

1 order resolving the claim was filed last night, and I noted  
2 the Court's entry of that stipulation this morning.

3 And, accordingly, I think at this time, unless the  
4 Court has further questions, we can move on to the third  
5 response on the Agenda, which was filed by the Group Wage  
6 Claimants.

7 THE COURT: Thank you. The Rohena claim has been  
8 resolved through the so-ordered stipulation, so we can move on  
9 to the response of the Group Wage Claimants.

10 MS. STAFFORD: Thank you very much, Your Honor. This  
11 response on behalf of the Group Wage Claimants --

12 (Sound played.)

13 MS. STAFFORD: -- was filed at ECF No. 17423, and it  
14 addresses Proofs of Claim Nos. 1845, 136186, 39906, 27602,  
15 45321, 12337, 36519, 29885, 10442, 35710, 129809, 90365,  
16 12312, 12345, 2252, 28152, 4821, 2414, 145627, and 41069.  
17 Each of the claims identified asserts the claim is either  
18 secured or entitled to 503(b)(9) priority.

19 The response does not contest the debtors' assertion  
20 that none of the claims identified are secured. In addition,  
21 the response agrees with the debtors that the claims are not  
22 entitled to 503(b)(9) priority. Claimants instead contend  
23 they are entitled to priority pursuant to 11 USC 503(b)(1)(A).

24 As we explained in our reply, however, 11 USC  
25 503(b)(1)(A) provides an in-service priority to wages and

1 salary attributable to periods of time occurring after  
2 commencement of a Title III case. Your Honor, here are  
3 plaintiffs in three employee, wage-related litigations  
4 initiated in the period between 2005 and 2009. Because these  
5 litigations assert pre-petition claims with respect to periods  
6 of time that predate the filing of these Title III  
7 litigations, they are not entitled to the priority asserted.

8 Excuse me, Your Honor. Claimants also contend the  
9 Commonwealth alleged adoption of a policy that considers  
10 paying employees --

11 (Sound played.)

12 MS. STAFFORD: Apologies, Your Honor. May I finish  
13 my sentence?

14 THE COURT: Yes, you may.

15 MS. STAFFORD: Thank you, Your Honor.

16 The policy discontinued paying employee wages and  
17 benefits in the ordinary course for unfairly discriminate  
18 against claimants, but as explained in the debtors' reply,  
19 whether claimants were unfairly discriminated against is an  
20 issue to be addressed in connection with confirmation.

21 Thank you.

22 THE COURT: Thank you.

23 So, Ms. Gonzalez Morales, would you like to speak in  
24 response? You'll have to unmute your phone and the dashboard.

25 MS. GONZALEZ MORALES: Okay. Thank you.

1 THE COURT: Good afternoon.

2 MS. GONZALEZ MORALES: Good afternoon, Your Honor.

3 This is Ivonne Gonzalez speaking regarding the Omnibus  
4 Objection.

5 We disagree with the government about the --  
6 reclassifying the employee wages as a general unsecured claim,  
7 because that is in conflict with the literal language of  
8 section 503(b)(1)(A). These appearing claimants have final  
9 judgment for back wages since was determined that does violate  
10 state and federal minimum wage laws, also, because the reality  
11 that under section 105(a), and under section 503(b)(1)(A),  
12 this Honorable Court has the flexibility necessary to deal  
13 with extraordinary situations if justice so requires.

14 In this case, the government ignores that the  
15 government, when it filed the Title III petition, voluntarily  
16 adopted a policy to continue payment of the employee wages and  
17 benefits under the regular conduct of business. That, Your  
18 Honor, we think is a prayer for priority payment of wages.  
19 Also, because this Honorable Court must guarantee claimants  
20 adequate protection and afford the same treatment as the other  
21 employees that are being paid fully their claims through these  
22 procedures, and also because the government has enacted the  
23 claim resolution process, and under that process also the  
24 employees will have 100 percent recovery, so we disagree with  
25 the treatment they are trying to give the claimants here. And

1 we request to deny the Omnibus Objections 345 and 347  
2 regarding our claimant. Thank you.

3 THE COURT: Thank you.

4 Ms. Stafford?

5 MS. STAFFORD: Thank you, Your Honor.

6 In response to Ms. Gonzalez Morales' claim regarding  
7 503(b)(1)(A), as I noted earlier and as we noted in the reply,  
8 the language in 503(b)(1)(A) claims that it addresses final  
9 judgments or wage claims that accrue in the period of time  
10 following the commencement of the case. And as noted, these  
11 claimants hold pre-petition claims for pre-petition  
12 liabilities related to wages and benefits purportedly earned  
13 prior to the -- many years prior to the commencement of this  
14 case.

15 With respect to the comments that Ms. Gonzalez now  
16 has made regarding the determination to continue to pay  
17 employee wages and benefits in the ordinary course, again, to  
18 the extent that Ms. Gonzalez Morales believes that her  
19 client's claims are being unfairly discriminated against, that  
20 argument is appropriately addressed in connection with the  
21 confirmation, and it doesn't -- is not within the scope of the  
22 Omnibus Objection before the Court today. And so we would  
23 request the Court sustain the objection, notwithstanding this  
24 response.

25 THE COURT: Thank you. I have a question for you.



1 | There was one claim number at least that didn't appear in your  
2 | reply, although it was listed in the Omnibus Objection, which  
3 | is claim no. 20773 of Zoraida Chevere Fraguada. Do you know  
4 | the reason for the discrepancy?

5 | MS. STAFFORD: I believe that -- I don't know  
6 | offhand. I believe that it may have been addressed by the --  
7 | or filed by the claimant themselves. But I can double check  
8 | and provide the Court with any supplemental filings that may  
9 | be necessary.

10 | THE COURT: Very good. So you will follow-up and  
11 | reconcile the situation as to that claim?

12 | MS. STAFFORD: Of course, Your Honor.

13 | THE COURT: Very well. Thank you.

14 | So having considered the submissions and the remarks  
15 | of counsel, the Court sustains the 345th Omnibus Objection as  
16 | to claim nos. 1845, 136186, 39906, 27602, 45321, 12337, 36519,  
17 | 29885, 10442, 35710, 129809, 90365, 12312, 12345, 2252, 28152,  
18 | 4821, 2414, 145627, and 41069; and these claims are  
19 | reclassified as unsecured claims, because the claimant's  
20 | asserted basis for administration expense priority under  
21 | section 503(b)(1)(A) of Title 11 only extends to claims  
22 | arising from events that occur after the commencement of a  
23 | bankruptcy case, and all of these claimants are asserting  
24 | claims that long predate the debtors' Title III petitions.

25 | Any objections as to the treatment of these unsecured

1 claims in relation to other unsecured claims can be pursued in  
2 the context of the confirmation proceedings. The claims are  
3 reclassified as unsecured claims.

4 Ms. Stafford, am I correct in understanding that  
5 there are further matters that will need to be addressed as to  
6 the 345th Objection, so this is not the right time for a  
7 comprehensive proposed order?

8 MS. STAFFORD: That is correct, Your Honor. Thank  
9 you.

10 THE COURT: Thank you. So we will go on to the next  
11 matter.

12 MS. STAFFORD: Thank you, Your Honor.

13 The next item on the Agenda combines the 347th, the  
14 349th, and the 351st Omnibus Objections, which both the  
15 objection and the response addressed all three together. Your  
16 Honor, I'd suggest that we proceed individually with respect  
17 to each of these Omnibus Objections, since there are  
18 distinctively slightly different issues.

19 THE COURT: Very well.

20 MS. STAFFORD: Thank you, Your Honor.

21 The first of these objections is the 347th Omnibus  
22 Objection, which was filed at ECF no. 17109. This objection  
23 seeks to reclassify certain proofs of claim that asserted an  
24 incorrect or otherwise improper priority, and it also seeks to  
25 reduce the amount of claims that were improperly logged on the

1 registry by Prime Clerk as a result of the way that Prime  
2 Clerk processes proof of claim forms.

3 One response was received and scheduled for hearing  
4 today. However, additional pro se responses remain  
5 outstanding. The response that was scheduled for hearing  
6 today was filed by the Group Wage Claimants at ECF no. 17425,  
7 and it addresses Proof of Claim Nos. 109157, 66935, 29547,  
8 105171, and 42138.

9 And, Your Honor, this response raises many of the  
10 same issues that were just addressed in connection with the  
11 345th Omnibus Objection. Again, as with the 345th Objection,  
12 the response does not dispute that the claims in question are  
13 not entitled to secured status or priority pursuant to  
14 503(b)(9), but does assert that claimants are entitled to  
15 priority pursuant to 503(b)(1)(A) of the Bankruptcy Code.

16 And for the same reasons, Your Honor, we would submit  
17 that those objections should be sustained and the claims  
18 reclassified, because as just discussed, 503(b)(1)(A) does not  
19 provide priority for wage claims based on judgments issued --  
20 or litigations initiated many years in the past.

21 THE COURT: Thank you.

22 Ms. Gonzalez Morales, did you wish to be heard as to  
23 this group of claims?

24 MS. GONZALEZ MORALES: Which ones? I'm sorry. I  
25 didn't hear very well.

1 THE COURT: So this group of claims -- actually,  
2 Ms. Stafford, would you just repeat and sum up your position?

3 MS. STAFFORD: Certainly, Your Honor. This is with  
4 respect to the 347th Omnibus Objection, which sought to  
5 reclassify certain proofs of claim on the basis that asserted  
6 secured status or priority pursuant to 503(b)(9), and as with  
7 the prior objection, we believe that these claims should be  
8 reclassified and are not entitled to priority pursuant to  
9 503(b)(1)(A).

10 THE COURT: And would you just cite again the claim  
11 numbers?

12 MS. STAFFORD: Oh, of course, Your Honor. Proof of  
13 Claim Nos. 109157, 66935, 29547, 105171, and 42138.

14 THE COURT: Thank you.

15 And now, Ms. Gonzalez Morales?

16 MS. GONZALEZ MORALES: Yes, Your Honor. Ivonne  
17 Gonzalez for the record.

18 We submit the argument by this prior one, because  
19 it's the same type of objection.

20 THE COURT: Thank you.

21 Anything further, Ms. Stafford?

22 MS. STAFFORD: Nothing further, Your Honor.

23 THE COURT: Thank you.

24 Having reviewed the submissions and listened to the  
25 arguments, the Court sustains the 347th Omnibus Objection as

1 to claim nos. 109157, 66935, 29547, 105171, and 42138. Those  
2 claims will be reduced, because the claimants do not dispute  
3 that the claims should be reduced in the manner described by  
4 the Oversight Board. The claims are also reclassified as  
5 unsecured, because the asserted basis for administrative  
6 expense priority, which was section 503(b)(1)(A) of Title 11,  
7 only extends to claims arising from events occurring after the  
8 commencement of a bankruptcy case, and these claims all assert  
9 claims that predate the debtors' Title III petitions.

10 So what do we need to address next, Ms. Stafford?

11 MS. STAFFORD: Thank you, Your Honor. The next item  
12 to be addressed is the 347th Omnibus Objection, which was  
13 filed at ECF No. -- I'm sorry, the 349th Omnibus Objection,  
14 which was filed at ECF No. 17092. This objection seeks to  
15 disallow in their entirety certain proofs of claim that are  
16 duplicative of master proofs of claim filed on behalf of all  
17 plaintiffs in certain pending litigation.

18 One response was received and scheduled for hearing  
19 today. Additional responses were filed by pro se litigants  
20 and will be addressed at a later date. The one response that  
21 was received was filed by the Group Wage Claimants at ECF No.  
22 17425 with respect to Proof of Claim Nos. 30608 and 96586.

23 Since the filing of our reply last week, I've had the  
24 opportunity to discuss both this objection and the next  
25 objection with Ms. Gonzalez Morales, which has clarified and I

1 believe narrowed --

2 (Sound played.)

3 MS. STAFFORD: -- and hopefully resolved the issues  
4 that were in dispute. And I believe we are in agreement that  
5 both of the claims that are subject to the 349th Omnibus  
6 Objection should be disallowed as duplicative.

7 The first of those is Proof of Claim No. 30608 filed  
8 by Ms. Sonia Acevedo Rosario. This claimant is identified in  
9 the verified statement filed on behalf of all plaintiffs in  
10 the Acevedo Camacho litigation. It appears on page one of  
11 Exhibit A of ECF No. 3406, and is claimant 14.

12 With respect to the second claim that is the subject  
13 of this Omnibus Objection, which is Proof of Claim No. 96586,  
14 the response and the reply has asserted this claim was filed  
15 by Maria Gonzalez Reyes. Further, the response contends is a  
16 member of the Augusto Maldonado plaintiffs group. However,  
17 Proof of Claim No. 96586 was also actually filed by Irma  
18 Gonzalez Reyes, not Maria Gonzalez Reyes. Irma Gonzalez Reyes  
19 appears on the verified statement of the Acevedo Camacho  
20 plaintiffs group and does not appear on the verified statement  
21 of the Augusto Maldonado plaintiffs group.

22 And so it's my understanding, and Ms. Gonzalez  
23 Morales will I'm sure correct me if I'm wrong, we are in  
24 agreement that these two claims are duplicative and may be  
25 disallowed.

1 THE COURT: Thank you.

2 Ms. Gonzalez Morales?

3 MS. GONZALEZ MORALES: Yes, Your Honor. We came to  
4 an agreement that all duplicate claims were going to be  
5 disallowed, but the remainder claims that the plaintiff filed  
6 on the case of Augusto Maldonado or Carmen Sacoro Cruz  
7 Hernandez will remain.

8 THE COURT: So this disallowance will only affect  
9 claim nos. 30608 and 96586; is that your understanding,  
10 Ms. Gonzalez Morales?

11 MS. GONZALEZ MORALES: Yes, Your Honor.

12 THE COURT: Very well. Based on the parties'  
13 clarification and agreement on the record, the 349th Omnibus  
14 Objection is sustained as to claim nos. 30608 and 96586, and  
15 those claims are disallowed as duplicative of the master claim  
16 filed in the Acevedo Camacho litigation captioned as Madeline  
17 Acevedo Camacho v. Puerto Rico Department of Family Affairs,  
18 no. 2016-05-1340. Thank you.

19 Ms. Stafford, what is the next matter?

20 MS. STAFFORD: The next matter, Your Honor, is the  
21 351st Omnibus Objection, which was filed at ECF No. 17112.  
22 This objection seeks to partially disallow certain proofs of  
23 claim that are duplicative of master proofs of claim filed on  
24 behalf of all plaintiffs in certain pending litigations.

25 One response was received and calendared for argument

1 today, with additional responses to be argued at a later date.  
2 The one response calendared for today was filed on behalf of  
3 the Wage Claimants at ECF No. 17425, and it addresses Proof of  
4 Claim Nos. 17965, 9440, 9647, 15550, 9210, 17033, 9322, 9127,  
5 10825 --

6 (Sound played.)

7 MS. STAFFORD: -- 23567, 22296, 9346, 23816, 75583,  
8 10368, 9423, 40644, 9645, 9454, 10427, 9625, 9056, 11097,  
9 10898, 17619, 11951, 12662, 9451, and 9617. And, Your Honor,  
10 I --

11 THE COURT: And was --

12 MS. STAFFORD: I'm sorry, Your Honor.

13 THE COURT: I'm sorry to distract you. There was  
14 another claim, 23166, that was mentioned in the response and  
15 listed in the objection that was not in the list that you just  
16 recited, also, 47278, and so I guess I will just ask that you  
17 undertake to follow-up on both of those.

18 MS. STAFFORD: We would be pleased to do so, Your  
19 Honor. I don't know if they may have been filed, those claims  
20 as well, but we will certainly investigate and follow-up on  
21 those.

22 THE COURT: Thank you. For your reference, the 47278  
23 is identified with an individual called Josefina Concepcion  
24 Quinones, and the 23166 is identified to Maria Rosado Cruz.

25 MS. STAFFORD: Thank you, Your Honor.



1                   So with respect to the claims that I just read off, I  
2 am pleased to report that we have had conversations with  
3 Ms. Gonzalez Morales, and I believe we have reached an  
4 agreement on this matter as well. But --

5                   (Sound played.)

6                   MS. STAFFORD: -- we are only seeking partial --

7 Apologies, Your Honor. May I finish my sentence?

8                   THE COURT: Yes.

9                   I would just ask that the timekeeper stop beeping,  
10 because we're doing all right. Thank you.

11                   You may finish.

12                   MS. STAFFORD: Thank you. With respect to the claims  
13 that are subject to this objection and that I just read off  
14 previously, we've reached an agreement with Ms. Gonzalez  
15 Morales with respect to these claims in so far as we are only  
16 seeking the partial disallowance of these claims to the extent  
17 that they assert either the Beltran Cintron litigation or the  
18 Acevedo Camacho litigation as set forth in our objections.

19                   To the extent that they assert the Augusto Maldonado  
20 litigation or the Cruz Hernandez litigation, those portions of  
21 the claims will be unaffected by this Omnibus Objection, and  
22 will be further explored at determination. And I would of  
23 course invite Ms. Gonzalez Morales to tell me if I have gotten  
24 our agreement correct.

25                   THE COURT: Thank you.

1 Ms. Gonzalez Morales?

2 MS. GONZALEZ MORALES: Yes, I am -- I agree with  
3 Laura Stafford, for what she said. We are in agreement.

4 THE COURT: Thank you.

5 With that confirmation of the agreement and the  
6 explanation of Ms. Stafford, the Court sustains the 351st  
7 Omnibus Objection as to claim nos. 17965, 9440, 9647, 15550,  
8 9210, 17033, 9322, 9127, 10825, 23567, 22296, 9346, 23816,  
9 75583, 10368, 9423, 40644, 9645, 9454, 10427, 9625, 9056,  
10 11097, 10898, 17619, 11951, 12662, 9451, and 9617. Those  
11 claims are partially disallowed as duplicative of the master  
12 claims filed in the Acevedo Camacho litigation captioned as  
13 *Madeline Acevedo Camacho v. Puerto Rico Department of Family*  
14 *Affairs*, no. 2016-05-1340, and in the Beltran Cintron  
15 litigation captioned as *Francisco Beltran Cintron v. Puerto*  
16 *Rico Department of Family Affairs*, case no. KAC-2009-0809, but  
17 only to the extent that those claims are duplicative of the  
18 claims asserted in the Acevedo Camacho and Beltran Cintron  
19 litigations.

20 Thank you. So let us go to the next matter,  
21 Ms. Stafford.

22 MS. STAFFORD: Thank you, Your Honor.

23 The next item on the Agenda is the 352nd Omnibus  
24 Objection, which was filed at ECF No. 17093. This objection  
25 seeks to disallow, among others, certain proofs of claim that

1 are duplicative of master proofs of claim filed by either  
2 trustees or fiscal agents on behalf of all holders of certain  
3 types of bonds, including bonds issued by PBA.

4 A response was filed with respect to this objection,  
5 and it was filed by Mr. Hein and Ms. Farley with respect to  
6 Proof of Claim Nos. 174229, 174231, and 174264. And the  
7 response was filed at ECF No. 17332, for the record. The  
8 response does not dispute that each of these proofs of claim  
9 asserts the right to payment in full of principal and interest  
10 on Mr. Hein and Ms. Farley's PBA bonds. The PBA Master Proof  
11 of Claim asserts precisely the same right to payment, the  
12 right to payment in full of principal and interest on bonds  
13 issued by PBA. The response also does not identify any  
14 additional rights to payment asserted by Mr. Hein or Ms.  
15 Farley, aside from the right to payment of principal and  
16 interest on their bonds.

17 The First Circuit's recent decision upholding this  
18 Court's dismissal of Mr. Hein's claim against COFINA,  
19 therefore, fully dispenses of this issue and the issues in the  
20 response. The facts before the First Circuit were precisely  
21 the same as the facts here today. Because Mr. Hein and Ms.  
22 Farley's claims assert the same rights of payment as the PBA  
23 Master Bond claim, they are duplicative and should be  
24 disallowed.

25 Instead of identifying any additional rights to

1 payment, the response purports to identify four key  
2 distinctions between the current scenario and the facts before  
3 the First Circuit. None of those distinctions, however, make  
4 any difference.

5 To begin, Mr. Hein and Ms. Farley contend that the  
6 COFINA decision is distinguishable, because here U.S. Bank is  
7 acting as a fiscal agent, whereas in COFINA, Bank of New York  
8 Mellon acted as a trustee. But Mr. Hein and Ms. Farley do not  
9 explain why this distinction makes any difference, because in  
10 both instances, the master proof of claim still asserts the  
11 right to payment of principal and interest on PBA bonds on  
12 behalf of all bondholders.

13 Mr. Hein and Ms. Farley contend that they have  
14 asserted additional theories of liability that U.S. Bank did  
15 not -- that the First Circuit squarely addressed and rejected  
16 the contention that that should entitle their claims to a  
17 determination that it is not duplicative. Mr. Hein and  
18 Ms. Farley remain free to raise these additional theories of  
19 liability in connection with confirmation, regardless of the  
20 outcome of this objection.

21 Mr. Hein and Ms. Farley also contend the *COFINA*  
22 decision is distinguishable, because it was litigated after  
23 COFINA's confirmation proceedings, but Mr. Hein does not  
24 explain why the timing of the litigation should make any  
25 difference or why the timing of the litigation will impact

1 whether the two proofs of claim assert the same rights to  
2 payment.

3 Mr. Hein and Ms. Farley also contend the objection  
4 should be denied, because their claim was filed prior to U.S.  
5 Bank's claim being filed, but, again, no explanation was  
6 provided as to why the timing of the filing should make a  
7 difference or have any impact on whether the two claims assert  
8 the same rights to payment.

9 Finally, Mr. Hein and Ms. Farley contend the claims  
10 cannot only -- be disallowed upon litigation of an act before  
11 proceeding to final judgment. As we explained in our papers,  
12 however, they simply misunderstand what this objection seeks  
13 to do. The objection does not resolve any of their assertions  
14 that they enjoy priority and secured status, and they retain  
15 the right to make any arguments relating to that, their  
16 allegations, in connection with confirmation. It is only  
17 resolving whether two claims assert the same rights to  
18 payment, and, again, no evidence has been presented that  
19 there is any additional rights to payment that Mr. Hein and  
20 Ms. Farley seek to assert against any of the debtors.

21 And with that, Your Honor, I would again reserve my  
22 time following the conclusion of Mr. Hein's argument.

23 THE COURT: I have a couple of questions for you  
24 before I call on Mr. Hein. So for clarity, what is your  
25 position as to Mr. Hein and Ms. Farley's ability to object to

1 the Plan and vote on the proposed Plan of Adjustment with  
2 respect to the PBA bond claims if I disallow their individual  
3 claims as duplicative of the master claim?

4 MS. STAFFORD: They will retain the right to vote  
5 through the DTC system, and they will retain the right of  
6 parties in interest to -- rights to payment have been asserted  
7 by the -- by U.S. Bank as the fiscal agent, to raise any  
8 objections that they wish. I don't believe that this  
9 objection and the disallowance of their individual claim would  
10 have any impact on those rights to vote or to object to  
11 confirmation.

12 THE COURT: Will it have any impact on their right to  
13 receive a distribution if I confirm the Plan of Adjustment?

14 MS. STAFFORD: Certainly not, Your Honor.  
15 Distributions would be made to them regardless of the  
16 disallowance of this claim. They'll be made in respect for  
17 their PBA Master Proof of Claim, and will be distributed to  
18 Mr. Hein and Ms. Farley.

19 THE COURT: Thank you.

20 I'll now hear from Mr. Hein.

21 MR. HEIN: Yes, Your Honor. Peter Hein. Can you  
22 hear me?

23 THE COURT: Yes, I can. Good afternoon.

24 MR. HEIN: Thank you.

25 So, to begin, I just want to make clear that our

1 response was timely filed. The Oversight Board's Reply states  
2 that supposedly, per the Court approved notice attached to the  
3 352nd Objection as Exhibit C, any response disputing the 352nd  
4 Objection was due on June 16th. The Oversight Board then  
5 points out our Response was filed on July 14th, implying that  
6 our Response missed the deadline.

7 Perhaps this is likely just an error in the Oversight  
8 Board's papers, but so there's no doubt left on the point,  
9 docket 17093, the 352nd Objection, states expressly on the top  
10 of the cover page, as well as in Exhibit C, that the response  
11 deadline is July 19, 2021. Our Response at docket 17332 was  
12 timely.

13 Next, let me address this claim that the First  
14 Circuit decision in the *COFINA* case is dispositive.  
15 Respectfully, it's equally lacking in merit. The posture was  
16 completely different in the First Circuit in *COFINA* than we  
17 are here. First, it absolutely does matter that in the *COFINA*  
18 case, the master proof of claim was filed by Bond Trustee,  
19 whereas here, the master proof of claim was filed by U.S.  
20 Bank, acting as debtors' agent.

21 Bankruptcy Rule 3003(c), which we -- I discussed in  
22 our opposition, but was ignored in the Oversight Board's  
23 Reply, and ignored this morning -- or this afternoon as well,  
24 authorizes an indentured trustee to file a master proof of  
25 claim. U.S. Bank is not an indentured trustee. Per U.S.

1 Bank's communication to holders of PBA bonds, and I attached  
2 it as Exhibit C to our opposition, U.S. Bank is, and I'm  
3 quoting, "solely the agent of PBA," the debtor.

4           The Oversight Board does not dispute that U.S. Bank  
5 was solely the agent of PBA, and that U.S. Bank -- unlike the  
6 trustee in the *COFINA* case, U.S. Bank is not an indentured  
7 trustee. There is no authorization under the bankruptcy  
8 statutes or rules for an agent of the debtor, which is what  
9 U.S. Bank is here, to file a proof of claim where the creditor  
10 has already filed its proof of claim, as we did here, because  
11 under Rule 3003(c)(1), only a creditor or indentured trustee  
12 is authorized to file a proof of claim.

13           There is no plausible basis to disallow our claims,  
14 and supposedly duplicative of a claim thereafter submitted by  
15 the debtor's own agent. Now, I realize that the Bar Date  
16 Order does have language authorizing fiscal agents or any  
17 similar agent or nominee to file a master proof of claim.  
18 Perhaps the role of U.S. Bank as being solely that of an agent  
19 for PBA was not focused on at the time the debtor prepared the  
20 proposed Bar Date Order, but the Bar Date Order did not  
21 override the Bankruptcy Rules, which do not authorize a  
22 debtor's agent to submit a proof of claim if the creditor has  
23 put in its own.

24           I would note there's one nuance under Rule 3004. If  
25 the creditor does not timely file a proof of claim, the debtor



1 may do so within 30 days. Here we did file proofs of claim,  
2 filed them before U.S. Bank. Rule 3004 clearly does not apply  
3 to this case.

4 Second, it also most certainly does matter that the  
5 Court is being asked to rule prior to confirming a plan. In  
6 *COFINA*, regardless of when the objection was filed, this Court  
7 and the First Circuit were ruling after the Plan had already  
8 been confirmed. Pre-confirmation, which is the status here,  
9 PBA claims assert valid and fully secured claims against the  
10 debtor and Commonwealth entitled to constitutional priority,  
11 with protections under the U.S. and Puerto Rico Constitutions.

12 The Oversight Board does not dispute that due process  
13 and Rule 7001(2) require an adversary proceeding against each  
14 bondholder to resolve claims where there's an issue as to  
15 validity, priority with the extent of a lien or other interest  
16 in property. And, in essence --

17 THE COURT: You say that they are not seeking to  
18 obliterate your validity or priority arguments by seeking to  
19 --

20 MR. HEIN: Oh, I understand they say that -- I'm  
21 sorry, Your Honor.

22 THE COURT: By seeking to disallow the claim as  
23 duplicative. Please go on.

24 MR. HEIN: I understand they say that, but we are  
25 pre-confirmation. We do have a right. They -- you cannot use

1 a claim objection to challenge a claim where the claim asserts  
2 a validity, priority or extent of a lien, so it just -- again,  
3 post-confirmation I acknowledge, as in *COFINA*, there would be  
4 a different situation, but we're pre-confirmation.

5 It also does not help for them to argue that the  
6 issues of validity and priority were compromised and settled  
7 by debtors. We weren't part of those negotiations. We didn't  
8 agree to the settlement. Absent a confirmation order, we  
9 can't be bound by that settlement.

10 I understand that if the Plan is confirmed in its  
11 current form, debtors may argue that confirmation overrides  
12 our entitled to priority and secured status, and also  
13 overrides our constitutional property rights. So I understand  
14 that, and that's why I think this is premature to be raised  
15 prior to confirmation. But for the Oversight Board to press  
16 its position prior to confirmation, they must bring an  
17 adversary proceeding. They cannot press this position by  
18 objection to a claim.

19 Third, a question presented here as to whether  
20 there's any showing of risk of duplicative payment to the DTC  
21 system was not addressed in the *COFINA* situation, because  
22 there again, the claim objection to *COFINA* was decided  
23 post-confirmation, after distributions had already occurred,  
24 after the effective date.

25 The Oversight Board does not dispute that

1 distributions will be made here pursuant to the DTC system.  
2 They do not identify any reason to believe that somehow  
3 duplicative distributions will be issued to me and my wife on  
4 our bonds under the DTC system.

5 A fourth point, we do have constitutional and other  
6 claims that were not asserted by U.S. Bank. We set those out  
7 in our Response, docket 17332, pages 19 to 22 of 187.

8 A fifth point, I -- respectfully, the claimed  
9 objection here was wholly conclusory. For that reason alone,  
10 it should fail.

11 To sum up, the debtors' objection to our claim I  
12 submit should be denied. I mean, simply the fact that there  
13 is no authorization under Rule 3003(c) for the debtors' agent  
14 to submit a claim to trump the claim of a creditor who has  
15 previously submitted a claim, simply -- Rule 3003(c) itself  
16 simply requires that the claims objection should be denied.

17 The Court cannot, under the Rules, disallow our claim  
18 based on a subsequent fugitive claim by the debtors' own  
19 agent, but at the very least, any ruling I respectfully submit  
20 should be deferred until after confirmation, or at least be  
21 expressly contingent upon and not effective until a  
22 confirmation order is entered.

23 And I think that, frankly, Your Honor, just the  
24 practical course here is to simply defer ruling until after  
25 confirmation, or at least make any ruling provisional and

1 contingent upon and not effective until confirmation. Thank  
2 you.

3 THE COURT: Thank you.

4 Ms. Stafford?

5 MS. STAFFORD: Thank you, Your Honor. I just want to  
6 respond briefly to a couple of the points that Mr. Hein just  
7 made, and I'll start with the points relating to U.S. Bank's  
8 status as a fiscal agent and what the Bankruptcy Rules permit  
9 in terms of Trustee's ability to file master proofs of claim.

10 As I think Mr. Hein acknowledged in his remarks, and  
11 as we noted in our papers, the Bar Date Order expressly  
12 authorized the filing of master bond claims by stipulation,  
13 and so we don't see that there's any reason to think that that  
14 master proof of claim is not a valid master proof of claim in  
15 light of the fact that they were expressly authorized by the  
16 Bar Date Order.

17 THE COURT: I guess Mr. Hein's point seems to be that  
18 he reads 3003(c) as exclusive and not permitting expansion via  
19 a bar date order.

20 MS. STAFFORD: Then I think that is an argument he  
21 should have raised previously when the Bar Date Order was  
22 being considered, but at this stage, I think, Your Honor, that  
23 that -- that argument has largely been waived as a result of  
24 not raising it earlier in time when that Bar Date Order was  
25 being considered.

1                   And with respect to Mr. Hein's points with regard to  
2 the claim objection seeking to resolve the priority unsecured  
3 status, again, Your Honor, as we stated in our papers and  
4 previously, our objection is not seeking to resolve any  
5 priority and secured status points raised by Mr. Hein and  
6 Ms. Farley. They are entitled to continue to raise those  
7 points throughout confirmation. And their contention that the  
8 Bankruptcy Rules require us to initiate individual adversary  
9 proceedings as to each and every individual bondholder is  
10 simply infeasible, and would complicate an already complicated  
11 docket.

12                   And with respect to the risk of duplicative payments,  
13 Your Honor, Mr. Hein is incorrect that this was solely  
14 resolved in *COFINA* post confirmation. That was certainly an  
15 issue that was raised in our Omnibus Objections which were  
16 filed while -- before confirmation, and I believe some of  
17 those objections were resolved prior to the confirmation of  
18 the Plan. And, in any event, there's just no reason to leave  
19 on the docket proofs of claim that run the risk of resulting  
20 in duplicative payments because they assert the same right to  
21 payment.

22                   And, for the same reason, there is no reason to defer  
23 determination, because Mr. Hein hasn't identified any reason  
24 why he would be prejudiced by the disallowance of this claim  
25 at this time, given every -- he will retain the right to both

1 assert priority, and secured status, and continue to vote,  
2 that's to confirmation, and to receive distribution pursuant  
3 to the Plan.

4 Unless Your Honor has any questions, we respectfully  
5 request the objection be granted.

6 THE COURT: Thank you. I have no further questions  
7 for you.

8 Having reviewed the submissions and listened to the  
9 arguments, the Court sustains the 352nd Omnibus Objection as  
10 to claim nos. 174231, 174264, and 174229 of Peter Hein and  
11 Anne Farley as duplicative of the PBA master claim logged as  
12 Proof of Claim 62833. They seek the same relief as that  
13 asserted by the PBA master claim. I cite you to the First  
14 Circuit's *COFINA* decision, *In re Financial Oversight and*  
15 *Management Board for Puerto Rico*, 987 F.3d 173, 187-88 (1st  
16 Cir. 2021).

17 The striking of the individual claims as duplicative  
18 does not preclude Mr. Hein and Ms. Farley from pursuing their  
19 priority contentions, and their constitutional contentions,  
20 and other theories with respect to their rights in connection  
21 with the claims for the full amount of the bond liability that  
22 has been lodged on their behalf by the fiscal agent pursuant  
23 to the authorization set out by this Court in the Bar Date  
24 Order. The Court finds the other distinctions asserted by  
25 Mr. Hein are not meaningful distinctions in this context from

1 the issues and determinations underlying the *COFINA* decision.

2 Accordingly, the objection to those three proofs of  
3 claim is sustained. Thank you.

4 MS. STAFFORD: Thank you, Your Honor.

5 THE COURT: Are there any other matters that need to  
6 be addressed today? Ms. Stafford, for the Oversight Board?

7 MS. STAFFORD: No, not on behalf of the Oversight  
8 Board, Your Honor. Thank you.

9 THE COURT: Thank you.

10 I am going wait 30 seconds, and if anyone else has an  
11 issue that needs to be raised today, please unmute yourself,  
12 and say your name, and I'll call on you.

13 (No response.)

14 THE COURT: Thank you. No one else has spoken up,  
15 and so this concludes the Hearing Agenda for this Omnibus  
16 Hearing. The next Omnibus Hearing is currently scheduled to  
17 begin on October 6, 2021, at 9:30 AM Atlantic Standard Time.  
18 The Court's hope is to be able to preside over that hearing  
19 from a courtroom in San Juan, but due to ongoing pandemic  
20 concerns and related physical distancing requirements, even if  
21 it is possible for me to conduct my responsibilities --

22 MS. NG: Judge.

23 THE COURT: Yes.

24 MS. NG: I'm sorry to interrupt. Mr. Roman is  
25 raising his hand.

1 THE COURT: Okay. Sorry, Mr. Roman. I don't have  
2 the dashboard in front of me, and so that's why I asked people  
3 to speak.

4 So would Mr. Roman please unmute himself and speak?

5 MR. ROMAN: Okay. Can you hear me?

6 THE COURT: Yes, I can.

7 MR. ROMAN: Okay. Thank you, Judge.

8 Judge, my name is David Roman. I was having trouble  
9 connecting, and I fear I may have missed the discussion on my  
10 Response to an objection. It's number seven on the Agenda.  
11 It relates to the 345th Omnibus Objection.

12 And I'm sorry for the technical glitch, but by the  
13 time I got connected, I think you were well past me.

14 THE COURT: Yes. That is the Sky High Elevators?

15 MR. ROMAN: That is correct, madam.

16 THE COURT: Yes. So we had discussed that, but we  
17 can -- and I had ruled, but I will listen to argument on that  
18 matter again. So --

19 MR. ROMAN: I appreciate that.

20 THE COURT: -- Ms. Stafford, thank you, due to the  
21 technical difficulty that Mr. Roman encountered.

22 So, Ms. Stafford, would you go back to your four  
23 minutes of opening remarks regarding the 340th Omnibus  
24 Objection?

25 MS. STAFFORD: Of course, Your Honor.



1           The 340th Omnibus Objection, it was filed at ECF No.  
2   17087, and it seeks to disallow in their entirety proofs of  
3   claim that are duplicative of other proofs of claim asserted  
4   against the debtors.

5           The one response to be considered at this time is  
6   filed by Sky High Elevators Corporation with respect to Proof  
7   of Claim No. 173732. And for clarity of the record, this  
8   addresses responses filed at ECF Nos. 17295 and 17459.

9           The response contends that Proof of Claim 173732 is  
10   not duplicative of Proof of Claim No. 173742, but it does not  
11   identify any relevant differences between the two proofs of  
12   claim, nor does it explain what different liabilities 173732  
13   seeks to assert that Proof of Claim 173742 does not.

14           Instead, the response asserts the debtors' request  
15   for additional information regarding Proof of Claim 173742  
16   suggests that the debtors cannot have determined that the two  
17   claims are duplicative. As our reply explains, however,  
18   Proofs of Claim 173732 and 173742 were determined to be  
19   duplicative, because they assert the exact same liabilities in  
20   the exact same amounts, and are based on the same exact  
21   documentation.

22           The fact that debtors requested additional  
23   documentation to enable them to better understand Claim 173742  
24   does not alter the fact the two claims assert the same  
25   liabilities. Indeed, as noted earlier, claimants themselves

1 have not provided any basis for an assertion the two claims  
2 are not duplicative. And for those reasons, Your Honor, we  
3 would request the objection be sustained.

4 THE COURT: Thank you.

5 Mr. Roman, would you like to unmute and respond?

6 MR. ROMAN: Yes, Your Honor. Thank you.

7 May it please the Court, this claim is for services  
8 that were rendered to the Public Buildings Authority, and they  
9 were invoiced. All of those invoices are in the possession of  
10 the debtor, and the basis for it is exactly that. These are  
11 unpaid invoices.

12 We received the objection, that, after a careful  
13 review, the Board was requesting that it be dismissed, because  
14 it was duplicative, yet at the time they provided no  
15 documents. And shortly before that we received a -- we were  
16 in contact with a Mr. Emmett McNulty, who responded to us that  
17 they were still identifying the specific invoices and the  
18 purchase order relevant to claim 173742. However, they never  
19 did get back to us, and so we have not had the benefit of  
20 reviewing that and -- to be able to rebut their conclusion  
21 that this is -- that it should not be allowed.

22 And, again, the point being that the allegation is  
23 that -- the objection is that it's duplicative, and yet the  
24 documents that would establish that are not on the record and  
25 have not been provided to us. So that's the basis of our

1 objection -- or our opposition to the objection I should say.

2 THE COURT: So, Ms. Stafford, as I hear Mr. Roman,  
3 he's saying that you're saying that the claims are  
4 duplicative, but you have not provided documentation showing  
5 how you made that determination, and to the extent you  
6 consider whatever Mr. Roman has provided insufficient, you  
7 should have shared with him what you have.

8 MS. STAFFORD: Understood, Your Honor. But I think,  
9 as we noted in our reply, that the basis on which we  
10 determined the two claims are duplicative are the documents  
11 themselves that were filed with the Proof of Claim, which,  
12 again, is exactly the same as between the two Proofs of Claim.

13 I understand that Sky High Elevator is intending to  
14 assert a claim in respect of unpaid invoices, and he will  
15 retain a claim relating to those unpaid invoices regardless of  
16 the outcome of this objection, because we are intending to  
17 preserve one of these claims related to those unpaid invoices,  
18 and we will continue to do the work necessary to reconcile  
19 that claim.

20 But the determination that the two claims are  
21 duplicative was made on the faces of the claims themselves,  
22 which clearly identify the same liabilities in the same exact  
23 amount, and are based on the same exact supporting  
24 documentation. And so since there is no, you know, indication  
25 that these two claims sought to assert any different

1 liabilities, or any different amounts, or invoices, or  
2 anything of that nature against the debtors, it's our  
3 understanding that these two claims are duplicative, and that  
4 one should be disallowed.

5 THE COURT: So, Mr. Roman, at the risk of being  
6 repetitive --

7 MR. ROMAN: Yes.

8 THE COURT: -- I hear Ms. Stafford saying that what  
9 you submitted is exactly the same on both claims. They intend  
10 to deal appropriately with what is represented by that set of  
11 papers, but only once, which is why they want to disallow the  
12 identical second set of papers as duplicative. Why shouldn't  
13 I grant that request?

14 MR. ROMAN: Your Honor, then I would need to know if  
15 it's the same claim number, will -- it will proceed under the  
16 same claim number, but with only one set of papers? Is that  
17 what they're saying?

18 THE COURT: Well, I think what they're saying is it  
19 will proceed under one of the claim numbers with that set of  
20 papers.

21 MR. ROMAN: Okay. So --

22 THE COURT: So, Ms. Stafford -- I'm sorry.  
23 Mr. Roman.

24 MR. ROMAN: No. No. Go ahead. I'm sorry, Your  
25 Honor.

1 THE COURT: I was just going to ask Ms. Stafford if I  
2 said that correctly.

3 MS. STAFFORD: Yes, that's correct. We will continue  
4 to process and reconcile the proof of claim asserting unpaid  
5 invoices under a single claim number without the need to do  
6 that twice across two duplicative claims.

7 MR. ROMAN: May I ask, Your Honor, if the Court would  
8 indulge me, is it the same claim number or are they proceeding  
9 under two different claim numbers?

10 THE COURT: Ms. Stafford?

11 MS. STAFFORD: The goal of the objection is so that  
12 we can proceed under only one claim number. There are two  
13 claim numbers currently outstanding that seem to seek the same  
14 amount of money on the basis of the same unpaid invoices, and  
15 so the intent is to clarify the record by removing one of  
16 those two duplicative claim numbers so that we can proceed  
17 with respect to only one claim number.

18 THE COURT: Okay.

19 MR. ROMAN: Your Honor.

20 THE COURT: To be very specific -- hang on one  
21 second, Mr. Roman.

22 So to be very specific, the debtor, Ms. Stafford, is  
23 saying that claims 173742 and 173732 are exactly the same in  
24 every respect, and so what you want to do is expunge 173732 as  
25 duplicative, but you will respond appropriately to and process

1 claim 173742, which you say is exactly the same as the 32  
2 claim; is that correct?

3 MS. STAFFORD: That's correct, Your Honor. And the  
4 one additional piece that I would note is that 173742 includes  
5 additional documentation, in that it attaches, in addition to  
6 an exact copy of the documentation that is attached to 173732,  
7 another completed copy of the Proof of Claim. And that is why  
8 we wanted to maintain 173742, because it appears to assert  
9 exactly the same liabilities, in exactly the same amount, on  
10 the basis of the exact same documentation, plus one additional  
11 piece of documentation.

12 MR. ROMAN: Yes.

13 THE COURT: Thank you.

14 Mr. Roman.

15 MR. ROMAN: Yes. I understand. That's fine. That's  
16 fine with us.

17 THE COURT: Okay. Very well then. Based on the  
18 submissions, and the record, and this colloquy on the record,  
19 the Court sustains the 340th Omnibus Objection as to Claim No.  
20 173732 of Sky High Elevators Corporation, and that claim is  
21 disallowed in its entirety, because that claim is duplicative  
22 of Claim No. 173742, which remains on the books.

23 MR. ROMAN: Yes, Your Honor.

24 THE COURT: Thank you.

25 Thank you, Ms. Stafford.

1 MR. ROMAN: Permission to withdraw, Your Honor.

2 THE COURT: Yes. Thank you, Mr. Roman. Keep well.

3 MR. ROMAN: Thank you. Have a good afternoon.

4 THE COURT: So going back to my closing remarks, the  
5 next scheduled hearing is the October Omnibus, which is  
6 scheduled to begin on October 6, 2021, at 9:30 AM Atlantic  
7 Standard Time. It is my hope to be able to be physically in  
8 San Juan to preside over that hearing. That is, of course,  
9 subject to whatever pandemic regulations and restrictions are  
10 in place at that time.

11 Even if I can be there, it is not clear at this point  
12 whether physical distancing requirements within courtrooms  
13 will permit everybody who wants to appear at the Omni to be in  
14 that same courtroom. So we may also have to use some  
15 presentations from New York and use some telephonic  
16 presentations through Court Solutions.

17 So we're too far out for me to know now exactly how  
18 this is all going to work, and I'll undertake to keep the  
19 parties updated through procedure orders and any related  
20 notices as we get closer to the time. In a moving landscape,  
21 that's about the best undertaking I can make at this point.

22 So, as always, I'd like to thank the court staff in  
23 Puerto Rico, Boston, and New York for all of their work in  
24 connection with these cases and each of these hearings. We  
25 are adjourned. Stay safe and keep well, everyone. Thank

1     you.

2                     (At 2:46 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT )  
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 145 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States District Court Judge Laura Taylor Swain, and the  
8 Honorable United States Magistrate Judge Judith Gail Dein on  
9 August 4, 2021.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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